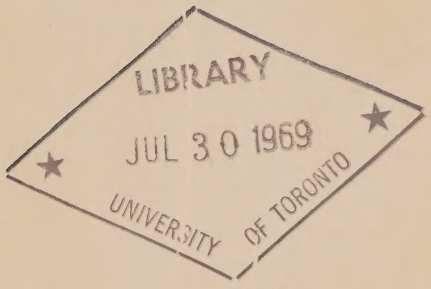
REPORT
of the
ROYAL COMMISSION ON SECURITY

(Abridged)



June 1969

Canada

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TO HIS EXCELLENCY
THE GOVERNOR GENERAL IN COUNCIL

MAY IT PLEASE YOUR EXCELLENCY

We, the Commissioners appointed as a Royal Commission in accordance with the terms of Order in Council P.C. 1966-2148 of 16th November 1966 to inquire into and report upon the operation of Canadian security methods and procedures,

BEG TO SUBMIT TO YOUR EXCELLENCY
THE ACCOMPANYING REPORT

CHAIRMAN

MEMBER

MEMBER

NOTE

The Report of the Royal Commission on Security as originally submitted to the Governor in Council in October 1968 included some material which in this published version has been omitted or amended in the interest of national security. These changes are of small significance in the context of the Report as a whole, and the Royal Commissioners agree that they do not affect the substance of the Report or its recommendations.

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I. INTRODUCTION

Terms of Reference

1. The Royal Commission's terms of reference required us "to make a full and confidential inquiry into the operation of Canadian security methods and procedures and, having regard to the necessity of maintaining (a) the security of Canada as a nation; and (b) the rights and responsibilities of individual persons, to advise what security methods and procedures are most effective and how they can best be implemented". Copies of the Commission and the Order in Council (P.C. 1966-2148 of 16th November 1966) are attached as Appendix "A" to this Report.

2. Interpreted broadly, these terms of reference would have required us to examine the whole range of problems and procedures concerned with the security of the state, from defence against armed attack to protection against crime. However, on the basis of our understanding of the circumstances in which the Commission was established we have interpreted the phrase "security methods and procedures" more narrowly, and have limited our inquiry to those procedures concerned with the protection of information the unauthorized disclosure of which would cause injury to the interests of Canada or her allies, and the protection of Canada against the activities of subversive organizations and individuals.

3. On the other hand, a too narrow interpretation of our terms of reference would have caused us to confine our attention only to methods and procedures and to remain unconcerned with more general questions of concept, policy and organization. Defence against threats to security is a duty and responsibility of a state comparable in meaning and relevance with defence against armed attack and insurrection. Security procedures however may touch closely upon the fundamental freedoms of individuals; in a democratic society they must be shown to be necessary and must operate within the framework of a scrupulously formulated and consistently enforced policy. With these considerations in mind we have also examined the general nature of the threats we face, and the basic concepts and policies which should guide our security posture, as well as the type of organization most appropriate for the implementation and monitoring of these policies.

4. The more precise definition of our areas of concern is a matter of considerable linguistic and legalistic complexity. However, security procedures are not necessarily related to the detection and prosecution of illegalities, where precise legal definitions would be of central importance, but are mainly concerned with the collection of information and intelligence, with the prevention and detection of leakages of information and with protection against attempts at subversion. For this reason we have been able to avoid too deep an involvement in definitional discussion; the following paragraphs are merely intended to delimit our areas of interest by means of example and exclusion.

5. The state has a clear right and a duty to protect certain information—some defence information, for example—which must remain secret if danger to the state is to be avoided. What is perhaps not so evident is that the state must also in certain circumstances be concerned, in the context of security, with information in the public domain. This is a contentious area. Consider on the one hand the case of a Canadian resident who passes to an official of a foreign embassy, not knowing that this official is a member of the intelligence service of the country concerned, a photograph of a Canadian city. This photograph is unclassified information which could conceivably be used for purposes prejudicial to the safety of Canada, but it would be difficult to suggest seriously that a single such act of transmittal should be a matter of concern to the security authorities. On the other hand, the collection, collation and communication to a similar official because of ideological sympathy or for monetary reward of unclassified information about (say) governmental procedures and personalities, or of information about births or burials that could be used to establish false identities, are clearly activities with security implications, whether or not they are judged to be illegal. We have taken the view that our terms of reference required us to give consideration to the whole range of such activities where the interests of the state are involved. We have however excluded from consideration the safeguarding of information which is not of direct concern to the government, and thus, for example, the general problems posed by industrial espionage in the private sector.

6. The area of subversion involves some even more subtle issues, and the range of activities that may in some circumstances constitute subversion seems to us to be very wide indeed: overt pressures, clandestine influence, the calculated creation of fear, doubt and despondency, physical sabotage or even assassination—all such activities can be considered subversive in certain circumstances. Subversive activities need not be instigated by foreign governments or ideological organizations; they need not necessarily be conspiratorial or violent; they are not always illegal. Again fine lines must be drawn. Overt lobbying or propaganda campaigns aimed at effecting constitutional or other changes are part of the democratic process; they can however be subversive if their avowed objectives and apparent methods are cloaks for undemocratic intentions and activities. Political or economic pressures from

domestic or foreign sources may be subversive, particularly when they have secret or concealed facets, or when they include attempts to influence government policies by the recruitment or alienation of those within the government service or by the infiltration of supporters into the service.

7. We have been unable to trace in any legal or other references or to devise ourselves any satisfactory simple definition of "subversion". Perhaps the most that can usefully be said is that subversive organizations or individuals usually constitute a threat to the fundamental nature of the state or the stability of society in its broadest sense, and make use of means which the majority would regard as undemocratic. At this stage we can do no more than state that we have in our inquiry borne in mind the whole range of such activities and the application of security procedures to them. We have however excluded from consideration the threat to stability posed by so-called "organized" crime, although there are clear analogies between the methods used for defence against large-scale and international criminal orgnizations and those used for protection against espionage and subversion.

Nature of Inquiry

8. Our terms of reference required that our proceedings should be held *in camera,* and that we should take "all steps necessary to preserve (a) the secrecy of sources of security information within Canada; (b) the privacy of individuals involved in specific cases which may be examined; and (c) the security of information provided to Canada in confidence by other nations". We were also required to "follow established security procedures with regard to . . . the handling of classified information at all stages of the inquiry". We decided that formal or quasi-judicial hearings would be inappropriate for the sensitive topics and subjective views we should find it necessary to consider. Accordingly we based our inquiry upon a series of informal meetings, without benefit of counsel, with Canadian Ministers and ex-Ministers of the Crown, and officials and ex-officials of the Canadian Government. In response to advertisements in the national press we received a number of briefs and submissions from interested organizations and private individuals, and we held similar informal meetings with representatives of some of these organizations and with some individuals. In all the Commission held 175 meetings, and heard some 250 persons. No verbatim records of our meetings were retained, but memoranda of significant points were prepared. In addition, of course, the Commission received briefs, submissions and documentary material from government departments and agencies, and had access to relevant governmental files; some such material was received on condition that it be returned to the originators. A selected bibliography of the published material we found relevant is attached as Appendix "B".

9. Where the files we saw concerned personnel security, we took the view that we were investigating an organizational structure and a procedural system rather than inquiring into the disposition of given cases, and we

referred to individual cases only as examples of methods and procedures. We have retained no records of the names of persons who were the subjects of these cases, or of identifiable details of the cases. Similarly, we have in our Report avoided providing detailed and specific examples of tactics, methods, successes or failures in the areas of espionage and subversion.

10. Members of our staff prepared reports upon the security policies, operations and activities of a number of Canadian government departments, and upon certain aspects of Canadian and British law relating to security. We also commissioned the preparation of two legal studies under contract, one concerned with the United States Federal Loyalty-Security Program, and the other with the legal status of security procedures in France.

11. We wish to thank all those who have contributed to this inquiry, and thus to this Report. Security is a contentious and ambiguous subject, and in some areas a distasteful one. Our task has been made easier by the ready cooperation of government officials and others. In particular we are grateful to the officials of the Royal Canadian Mounted Police (RCMP), the Privy Council Office and the Department of External Affairs. To our own staff, we extend special thanks. Their unfailing courtesy and cheerfulness made our task more pleasant. In particular we would pay tribute to our Secretary, Mr. Kevin O'Neill, and our Research Director, Mr. Jack Trotman. Their wise and practical handling of the many sensitive matters that arose during our inquiry and their devoted interest made a tremendous contribution to our work. Major André Lemieux's administrative and security arrangements were efficient and most helpful.

12. Finally, we have become convinced that effective security arrangements must have a firm basis in public awareness and understanding, that the level of parliamentary and public debate on these subjects would be considerably improved if more information were made available, and that a good deal of information could in fact be made available without detriment to the public interest. For these reasons, we feel that the government should make public as many of the arguments and recommendations contained in this Report as may in its opinion be revealed without damaging the public interest.

II. SECURITY REQUIREMENTS AND RESPONSES

General Considerations

13. The requirement for security procedures is based primarily upon the state's responsibility to protect its secrets from espionage, its information from unauthorized disclosure, its institutions from subversion and its policies from clandestine influence. There has been no period in history when attempts at activities of these kinds have not been undertaken; such attempts—successful or unsuccessful—are taking place now, and will undoubtedly continue to take place in one form or another as long as international relationships are based upon the existence of nation states. In order to carry out its responsibilities the state must make arrangements to determine the nature and extent of activities of this kind which exist at any given time, and to take such preventive or defensive measures as may be possible and appropriate.

14. From detailed estimates that have been made available to us by the RCMP and other concerned departments of government, it seems clear that the main current security threats to Canada are posed by international communism and the communist powers, and by some elements of the Quebec separatist movement. The most important communist activities in Canada are largely directed from abroad, although domestic adherents of and sympathizers with communism pose considerable problems in themselves; the separatist movement is primarily of domestic origin, although there has been some indication of foreign involvement. Threats (particularly of espionage) from non-communist countries may exist from time to time, but seem at present to be of minor importance. Fascist organizations do not now pose a significant threat, as their power base is non-existent and their activities limited.

Communism and Security

15. Although it is true that we face a more complicated and fragmented communist world than we did at the time of Gouzenko's defection nearly twenty-five years ago, none of the evidence we have heard suggests to us that recent developments have led to any significant changes in the adversary relationship that continues to exist between the communist powers and the west in terms of intelligence and subversive operations and security defences. Canada remains the target of subversive or potentially subversive activities,

attempts at infiltration and penetration, and espionage operations conducted by communist countries; and, in addition, Canada can be used as a base for operations against other countries, and especially against the United States. We realize of course that the present fragmentation of the communist world is such that there is no certainty that the intelligence policies of all these countries constitute a monolithic whole. We are not concerned however with detailed political analysis, and in the context of the problems we are considering we think the methods and objectives of these countries are sufficiently similar to justify our using the admittedly simplistic terms "communism" and "communist".

16. The communist powers conduct espionage and subversive operations through officials of communist missions, through so-called "illegal residents" (persons unassociated with official representation and living here illegally, probably under false identities), through members of the communist parties in Canada, both overt and underground, through communist sympathizers of various kinds, and through those who can be compromised, blackmailed or subverted. The communist intelligence services are supported by large resources, and their techniques are modern, sophisticated and effective.

17. Apart from their use of communist adherents and sympathizers in Canada, it is particularly important to an understanding of security procedures to realize that there is abundant evidence that the communist powers, in their search for agents, are prepared to make use of compromise, character weakness and duress. By these means they exploit contacts amongst members of the Canadian public service at home and abroad, industrial workers and executives, members of emigré and ethnic groups, university faculty members and students and those who travel between Canada and communist countries. The communists have repeatedly demonstrated their ability to recruit support by playing on all types of human weakness or difficulty.

18. The forms of communist subversive activity in Canada are varied, ranging from efforts to develop front organizations to attempts to subvert individuals in government, the mass media, the universities, the trade unions, emigré and ethnic groups and political parties. Such activities are assisted by the fact that the communists are able to exploit and exaggerate existing elements of social unrest and dissent concerned with a variety of appealing causes. Some facets of these operations are worthy of special mention. First, activities in universities and trade unions appear at present to be of special significance. Half the population is under twenty-five and activities in the universities will have a considerable effect on the national climate of opinion in future years. As far as the trade union movement is concerned, there is a long history of attempts by the Communist Party to assume control at local levels and to take all possible measures to influence national policies; these attempts are usually, but not always, frustrated. Secondly, efforts to influence immigrants from some Western European countries with large communist

parties have recently increased. Thirdly, certain communist countries which have emigré groups in Canada have embarked on an extensive programme to establish liaison with these communities, a programme in which the intelligence services of the countries concerned appear to be playing an important role. Fourthly, there has been some resurgence of activity by certain communist front groups; communist influence also remains significant in a number of non-communist peace groups, and in "friendship" societies linking Canadians with the communist countries. Fifthly, although the Trotskyist movement in Canada is very small in size, its militancy and skill give it greater potential influence than its strength would indicate.

19. As far as espionage is concerned, we have received enough information and examined enough case histories to make it clear that in addition to those activities which have been uncovered, other active operations almost certainly remain undetected, many of them probably conducted by "illegal residents". Military information appears to remain of considerable importance as a target for espionage operations, but there is some evidence that the communist intelligence services may be placing a somewhat higher priority upon the acquisition of scientific, technical, economic and political information, including unclassified information of seeming technical or strategic value. The importance of Canada as a target for espionage operations should not be underrated. We hold United States and British classified information, we participate in North American air defence arrangements and in the North Atlantic Treaty Organization, and our attitudes, policies, capabilities and intentions are in themselves of some significance.

20. There is no evidence to indicate that the general nature and extent of communist activities in the intelligence field have been significantly affected by changes in international relationships, by the atmosphere of the détente or by the communist doctrine of peaceful coexistence. However valuable this atmosphere may be from many points of view, it is undoubtedly true that from the specific and limited viewpoint of security the détente has its dangers. It would appear that periods of détente with communist powers tend to be accompanied by increased attempts at subversion and penetration. In present circumstances, the détente has led to a considerable and rapid expansion in relations between the communist countries and the west, and in our open societies the communists take advantage of such contacts to improve their capabilities for espionage and to increase their influence both overtly and covertly. At the same time as these opportunities are increasing there has grown a readiness to believe that the threat to security posed by communism, if it has not actually disappeared, is at least diminished. This has resulted in a situation in which defensive measures are constrained and inhibited, and accorded lowered priorities in terms of national attitudes, effort and resources. It seems to us important to appreciate that in present circumstances security procedures will remain necessary whatever the changing state of overt relationships between the communist powers and the west;

these precautions are in the nature of insurance, and one does not cease to pay premiums because of good health which may be temporary.

Quebec Separatism and Security

21. In addition to the requirement for security procedures imposed by the communist threat, Canada is at present faced with a second and perhaps even more difficult internal security problem arising from the activities of some elements of the Quebec separatist movement. Separatism in Quebec, if it commits no illegalities and appears to seek its ends by legal and democratic means, must be regarded as a political movement, to be dealt with in a political rather than a security context. However, if there is any evidence of an intention to engage in subversive or seditious activities, or if there is any suggestion of foreign infiuence, it seems to us inescapable that the federal government has a clear duty to take such security measures as are necessary to protect the integrity of the federation. At the very least it must take adequate steps to inform itself of any such threats, and to collect full information about the intentions and capabilities of individuals or movements whose object is to destroy the federation by subversive or seditious methods.

22. Although the more moderate elements of the Quebec separatist movement have up till now been conducting a largely political campaign, it appears to us that there is in certain quarters a tendency to resort to activities that could well be regarded as seditious. What is more, there is no doubt about communist and Trotskyist interest and involvement in the movement. Both groups have established "autonomous" Quebec organizations as somewhat transparent attempts to exploit separatist sentiment; members of both have achieved positions of influence in at least some of the separatist groups and agencies, helped by the often bitter factionalism within the movement itself. For these reasons alone it seems to us essential that the Canadian security authorities should pay close attention to the development of these particular elements of the separatist movement.

23. Foreign involvement is more difficult to establish with any certainty. However, it is clear that certain communist countries have shown a marked interest in the formation of the Communist Party of Quebec.

Canada and Her Allies

24. In addition to the normal responsibilities for defence against threats to internal security which she has in common with all nation states, and more specifically in present circumstances with all members of the western alliance, Canada's special relationships with the United States and Britain impose additional requirements and make Canadian security procedures of particular importance.

25. The United States is the leader of the western alliance in terms of military, economic and political power. As a member of this alliance with special

relationships in many fields and an open frontier with the United States, Canada has a serious responsibility to ensure that its territory is not used as a base for the mounting and direction of foreign espionage and subversive operations against the United States, and that Canada is not a safe haven for foreign agents, or a route for infiltration into the United States. Quite apart from membership in the alliance, it is in the Canadian national interest to assist with the defence of North America against threats to internal security.

26. There is another area in which Canadian security policies are responsive to the requirements of allies, and to the individual or collective security regulations of allied countries. Canada receives classified information from abroad, and especially from the United States and Britain. This classified information is made available on the understanding that it will receive security protection similar to that which it would receive in its country of origin; and the Canadian government is committed by a number of agreements to providing such protection, which normally involves specified minimum standards both of physical protection and of screening for the individuals who will have access to the material. Undoubtedly, some of this classified information is supplied because it is in (for example) United States and British interests to ensure that Canada is informed on certain issues, but in general the continued flow is at least partly dependent upon the apparent adequacy of Canadian security measures.

27. The point has been made that it might be of advantage to reduce the extent of Canadian security precautions by ensuring that the amount of classified material from allied sources reaching Canada is reduced to a minimum, and we have given some consideration to the apparent importance to Canada of this classified information. It is difficult to establish the position with any precision, but the representations we have received from interested departments convince us that the flow is of considerable importance, first, to Canadian perception of the international scene and of the detailed significance of many issues, and secondly to Canadian policy and decision-making in a number of specific areas. These areas are mainly concerned with intelligence and security, research and development, foreign and defence and (perhaps to a slightly lesser extent) economic policy; in addition the continuance of defence production sharing arrangements between Canada and the United States is partly dependent on the adequacy of Canadian security procedures. Further, with regard to the possibility of reducing the flow, it has been pointed out that in many areas it is very difficult to be selective: either Canada receives a mass of material or it receives none. The receipt of even a minimal flow would require security procedures and precautions and, in any case, many of these precautions would be necessary for Canadian national purposes. In general, our position on this issue is that we do not think that a decision to reduce the flow of allied classified information should be taken merely on the grounds that its receipt demands the maintenance of more extensive security precautions.

Security Responses

28. In order to meet the requirements we have outlined, a number of security methods and procedures have been devised or suggested. The following paragraphs represent an attempt to create a framework within which to view the details of these methods and procedures. Before outlining such a framework, however, we would first reiterate our view that the duty of the state to protect its secrets from espionage, its information from unauthorized disclosure, its institutions from subversion and its policies from clandestine influence is indisputable; what are matters for dispute are the organizations and procedures established by the state to meet this responsibility in an area which can touch closely upon the fundamental freedoms of the individual. Secondly, we would repeat our opinion that security procedures must not be viewed primarily in the context of the detection and prosecution of illegalities. They are mainly concerned with the collection of information, with the prevention of leakage and loss and with ensuring that compromise is discovered.

29. In all countries security procedures consist of a range of measures. First, there are those basic measures which provide for the acquisition of information by means of active intelligence operations, investigation or liaison with allies. This information provides the basis for the general assessment of the varying threats, and for the formulation of appropriate policies. In addition, these measures provide the data against which risks are assessed and judgments made in individual cases. No security arrangements can be better than the data on which they are based, and the more complete the information that is available the more sensible and equitable are policies and decisions likely to be.

30. Next, an array of measures is concerned with the control and regulation of certain actions of individuals. These measures all involve the investigation and "screening" of personnel with a view to preventing where possible those who in the judgment of the government may constitute a risk to the security of the state from entering the state, becoming citizens of the state, entering public employment or having access to classified information. Procedures concerned with security screening of personnel may themselves include a range of activities: the establishment of criteria; examination of available records including criminal records; interviews with the concerned individual; inquiries concerning an individual; arrangements for the evaluation of reports; arrangements to ensure the consistency of decision-making; procedures for review of these decisions; and procedures for taking action where individuals are judged to be risks in terms of their probable behaviour. In more detail, these measures include the following activities:

(*a*) Control of entry to the national territory, by means of visa control and arrangements for the security screening of intending immigrants or visitors or both. Such measures are employed in one form or another by almost all nations.

(*b*) Control of the granting of citizenship to other than native-born persons, by means of similar security screening of applicants. Again it is normal for nations to employ some such procedures.

(*c*) Control of passport issuance. Almost all nations take steps to ensure that passports are "documents of integrity" in the sense that they are issued only to those who are citizens. Some nations issue passports to all citizens as a right, although exceptions are naturally made in the cases of such persons as fugitives from justice, those who have contravened certain laws and those who owe debts to the government. Other nations subject applicants for passports to security screening on the basis of the opinion that possession of a passport is a privilege which the state is entitled to grant or deny.

(*d*) Control of access to public employment. Here again, some nations insist on a form of security screening for all public employees; the results of such a screening are sometimes used in the personnel selection context to judge suitability as well as to ensure the absence of any significant security risk.

(*e*) Control of access to classified information and material. Almost all nations conduct security screening in one form or another before permitting individuals to have access to classified information.

31. In addition, a series of measures relates to the classification, safekeeping, handling and transmission of material which requires security protection, to the provision of appropriate technical and other facilities, and to procedures to ensure compliance with security regulations. Finally, a legal and law enforcement structure is concerned with the adequacy and enforcement of such laws as relate to various aspects of security defence.

32. Different elements of this range of measures may receive differing emphases or priorities in different countries and in different circumstances, and there is naturally a continuing debate concerning the relative importance of measures in different parts of the spectrum. Some, for example, consider immigration security controls of vital importance; others feel that the number of persons eventually excluded as a result of these controls is so small as to call into question their usefulness. Some believe that citizenship should be an accolade only awarded to those (other than the native born) who can satisfy rigid security criteria; others feel that a resident is very little more of a security threat if he becomes a citizen or less of a threat if he does not. Some take the view that the basic measures of physical security are of prime importance; others argue that it is of first importance to be assured of the loyalty and reliabiliy of those with access to classified information.

33. Clearly a proper balance is necessary between these interrelated measures. If immigration controls are reduced in effectiveness, possibly access to the public service should be more strictly controlled by ensuring (for example) that only citizens are so employed. If immigration controls

are strengthened, possibly control of citizenship can be relaxed. The main strategic decisions in the area of security are concerned with the allocation of available defensive resources to the elements of the spectrum, and decisions of this kind must be taken by the government on the basis of estimates of the threat and judgments of the relative effectiveness and acceptability of different measures in changing circumstances; ultimately, we suppose, the totality of these judgments must in some sense reflect the government's view of national character, attitudes and aspirations.

34. The remaining chapters of our Report are concerned with the individual procedures which together make up this spectrum of security defence, with the organizational problems that arise from them, with their impact on individuals, with their effectiveness in specific areas and with means by which they may be improved and rationalized.

III. ORGANIZATION FOR SECURITY

Present Canadian Structure

General Considerations

35. Our inquiries suggest that the problem of devising an entirely satisfactory and rational security structure is one of extreme difficulty. In the first place, the government is functionally organized by departments, and there are obvious problems in superimposing and enforcing consistent standards in a given "service" area across the entire structure; the long history of issues concerned with financial control is sufficient to indicate the magnitude of this problem, which is of especial significance when organizational structures are decentralized. Also, security is an area which lies on the boundaries between general administration and professional specialty; it is easy—perhaps too easy—to regard security merely as an aspect of departmental administration and on this basis to disregard or evade its importance and complexities. Further, security structures, like police structures, must be closely related to the nature and quality of the national societies in which they operate if they are to achieve a reasonable measure of public acceptance. This relationship and this acceptance are perhaps somewhat easier to achieve in countries with long histories of threats to internal security and traditional requirements for defensive measures, or in great powers where the risks are clear and the stakes high.

36. The present Canadian security structure is diffuse, and consists of a number of disparate elements, including the Cabinet Committee on Security and Intelligence, the Security Panel, the Privy Council Office, the Solicitor General and his Department, the Minister of Justice and the Department of Justice, and the RCMP. In addition, all departments and agencies of the government have responsibilities for security which vary widely in scope and importance.

Policy-Making and Coordination

37. The Cabinet Committee on Security and Intelligence, the Security Panel, and two members of the staff of the Privy Council Office are all concerned with the formulation of policy, the issuance of directives and regulations and the coordination of Canadian security policy and procedures. The Cabinet Committee was established in April 1963, and in its security role deals with important policy issues referred to it by the Security Panel. On the

official level, the Security Panel is the senior body, consisting of selected deputy ministers. It was originally formed in 1946, and was reconstituted in 1963. Its terms of reference are "to advise on the coordination of the planning, organization and execution of security measures which affect government departments, and to advise on such other security questions as might be referred to it". Two officials of the Privy Council Office (an Assistant Secretary to the Cabinet and a member of the Cabinet Secretariat) together devote part of their time to providing the central point of reference and coordination for this committee structure. Theoretically, the first point of contact for departments and agencies seeking advice on security matters is this secretariat. Generally problems are dealt with by the officials of the secretariat themselves, but if necessary the issues can appear on the agenda of the Security Panel and the Cabinet Committee.

The Royal Canadian Mounted Police

38. The RCMP is the main federal operational and investigative body in the field of security. The Force assumed this role during World War I because, as the existing federal police force, it was at that time the natural federal instrument in this area. There is however no explicit statutory authority for the security role. Such authority as does exist is derived from certain Sections of the RCMP Act (S.C. 1959, c. 54). Section 17(3) of the Act provides *inter alia* that "every officer, and every person appointed by the Commissioner under this Act to be a peace officer, is a peace officer in every part of Canada and has all the powers, authority, protection and privileges that a peace officer has by law". Section 18 of the Act makes it "the duty of members of the force who are peace officers, subject to the orders of the Commissioner,

(*a*) to perform all duties that are assigned to peace officers in relation to the preservation of the peace, the prevention of crime, and of offences against the laws of Canada and the laws in force in any province in which they may be employed, and the apprehension of criminals and offenders and others who may be lawfully taken into custody.....and

(*b*) to perform such other duties and functions as are prescribed by the Governor in Council or the Commissioner."

39. Section 21 of the Act provides that:

"(1) The Governor in Council may make regulations for the organization, training, discipline, efficiency, administration and good government of the force and generally for carrying the purposes and provisions of this Act into effect.

(2) Subject to the provisions of this Act and the regulations made under subsection (1), the Commissioner may make rules, to be known as standing orders, for the organization, training, discipline, efficiency, administration and good government of the force."

40. Section 44(e) of the RCMP Regulations and Orders (1960), which have been proclaimed by the Governor in Council under the Act, provides

that "in addition to the duties prescribed by the Act, it is the duty of the force . . . (e) to maintain and operate such security and intelligence services as may be required by the Minister". The Commissioner's Standing Orders include orders relating to security and intelligence activities. Section 1331 of these Orders outlines the organization of the Directorate of Security and Intelligence of the RCMP and Section 1366 states the responsibilities of its Director:

> "The Director, Security and Intelligence is responsible for the direction and correlation of activities in respect to counter-espionage and subversive activities against the State, for security investigations regarding personnel employed by the Government and others as required, for co-operation with Commonwealth countries and foreign nations in matters concerning the internal security of the State, co-operation with the internal intelligence organizations, both service and civilian, and for the direction of security and intelligence investigations generally."

41. Additional authority for the RCMP's security and intelligence operations is contained in certain instructions and directives issued by the Government, which in effect authorize the RCMP to conduct the investigations necessary for a security screening programme, and in addition make the Force responsible for various measures concerned with internal security in the event of a national emergency as proclaimed under the War Measures Act. In practice the RCMP is concerned with the following security functions:

(*a*) all security and security intelligence operations, and "police" operations related to security;

(*b*) maintenance and examination of records and field inquiries concerning personnel, but not evaluation of reports, nor decision-making in individual cases;

(*c*) advice concerning departmental security (this function appears to be somewhat ill-defined);

(*d*) record keeping;

(*e*) certain staff functions (membership of interdepartmental committees, etc.) related to the management and planning of the national security effort.

These functions are performed by a headquarters Directorate of Security and Intelligence, which maintains representatives at RCMP regional headquarters and detachments and at certain locations overseas, and which operates in close liaison with the other directorates of the Force. Nearly 60 per cent of the personnel of the security and intelligence directorate (including all the senior officers, all but three of the branch heads and almost all the officers responsible for operations or investigation) are Regular Members of the Force; the remaining personnel include some special constables employed on surveillance duties, Civilian Members employed as translators, technicians or researchers and public servants on clerical duties.

42. Until September 1966 the Minister of Justice, by virtue of the RCMP Act, was the minister responsible for the RCMP and the minister who reported to Parliament for the Force. The Government Organization Act (S.C. 1966-67, c. 25), which came into force in September 1966, transferred this responsibility to the Solicitor General, under whom a new Department of the Solicitor General was created. The duties and functions of the Solicitor General formally "extend to and include all matters over which the Parliament of Canada has jurisdiction, not by law assigned to any other department, branch or agency of the Government of Canada, relating to (a) reformatories, prisons and penitentiaries; (b) pardons and remissions; and (c) the Royal Canadian Mounted Police". The Department of Justice is now only concerned with security matters when the Minister is required to rule on the propriety of prosecutions or to provide legal advice relating to security.

Departments of Government

43. All departments and agencies of the Canadian Government have a responsibility to protect the confidentiality that attaches to official material. In addition, almost all have a requirement for more formal procedures to protect classified material. For example, at the very least all ministers' offices and all offices concerned with briefing ministers on Cabinet matters hold classified documents, and in addition most departments involved in any way with scientific, sociological, economic or other research require at least occasional access to classified material.

44. Within this broad framework, however, departmental requirements vary widely. Some sensitive departments generate and hold large amounts of classified material, and have special security responsibilities. These include, for example, the Departments of National Defence, External Affairs and Defence Production, and the Privy Council Office and Cabinet Secretariat. Other departments are less sensitive. Such departments as the Department of Agriculture and the Department of Energy, Mines and Resources generate and hold smaller amounts of classified material, often in specific branches or sections, and their personnel generally require less frequent access to such material. Certain departments and agencies (such as the Department of National Revenue, the Dominion Bureau of Statistics and the Post Office) are responsible for the "privacy" of much material they hold; these departments are often the subject of special statutory provisions concerning confidentiality.

Shortcomings and Alternatives

Policy-Making and Coordination

45. In the following sections of this chapter we examine the effectiveness of the present organization and the alternatives that seem relevant. Because we shall inevitably be noting certain shortcomings in present arrangements,

we wish to make it clear that they are not generally due to arbitrary judgment or lack of care, but rather to difficulties inherent in existing organizational structures, or to unresolved conflicts on policy.

46. The policy-making and coordinating organization should in our opinion perform a number of functions. It should:

(*a*) provide a machinery whereby security strategy can be devised, policies and priorities determined, and resources allocated to various measures;

(*b*) be the arbiter of any conflicts between the interests of security on the one hand, and departmental and other interests on the other;

(*c*) be the authority which issues general regulations and procedures to be applicable throughout the whole official security environment, and which coordinates and enforces the application of these regulations;

(*d*) provide the link between the investigative and operational security service and government departments, and between this service and the public;

(*e*) be responsible for the operation and administration of any machinery established to review administrative decisions relating to the security of personnel. The nature of this machinery is considered in Chapter IV in relation to the general subject of security and the individual.

47. At present, the Security Panel and the concerned officers in the Privy Council Office make an attempt to perform most of these functions, but they do so without executive authority or adequate resources, and with an approach which is necessarily permissive rather than compelling. As far as the formulation and coordination of security policy is concerned, it seems to us that under present arrangements the total view of the requirements of security may often be obscured by the pressures exerted by individual departments and the exigencies of their proposed policies. Nor are we certain that the present structural arrangements ensure that issues and arguments concerned with security are presented to government in an explicit and undiluted form. Government policies in this vital area should not be based merely on the recommendations of an interdepartmental committee on which the professional proponents of security may readily be outnumbered.

48. The present arrangements for the implementation of decisions and policies appear in theory to be tidy and effective. Issues are raised, and directives are issued; the coordinating machinery is consulted and advice is proffered. It is our opinion, however, that this effectiveness is more apparent than real. The basis of the Canadian security organization is the principle that individual ministers, deputy ministers and agency heads are entirely responsible for the security of their agencies, and this principle is reflected in the fact that all coordination is entirely permissive. Even Cabinet Directives relating to security appear to be merely advisory in the sense that only the most informal arrangements exist for ensuring compliance or consistency in departments.

49. We feel that changes need to be made in the central structure if policies are to be scrupulously formulated and consistently enforced, and if the security of the state and the rights of individuals are to receive adequate protection. Our suggestion is that there should be established in the Privy Council Office a formalized Security Secretariat with adequate status, resources and staff to formulate security policy and procedures in the context of general governmental policies, and more importantly, with effective authority to supervise the implementation of government security policies and regulations and to ensure their consistent application. This Secretariat would be analogous as an organizational entity to the present Secretariats on Science and on Bilingualism. It would be headed by a Director responsible to the Secretary to the Cabinet, and would maintain close links with and be advised by the Security Service. We think that the Director would require the assistance of at least three full-time officers to perform these functions adequately.

50. On the level of policy formulation, the Secretariat would make recommendations to the government after consultation through a formal or *ad hoc* committee structure with interested departments. These recommendations would not then be the formal product of the deliberations of an interdepartmental committee, at which some of the requirements of security may not have been given adequate weight, but would instead be the product of a specialist secretariat advised by interdepartmental consultation. The Secretariat would also be responsible for the preparation, coordination and enforcement of government regulations on security. In these functions it would be advised by a protective security branch of the Security Service. This branch would conduct security audits but, if it found departments reluctant to rectify faults, would request assistance from the Secretariat. The Secretariat would press the security case on deputy ministers through the Secretary to the Cabinet or on ministers through its designated minister.

Operations and Investigation

51. Naturally, many of the most important issues concerned with organization relate to the federal operational and investigative security service—at present the Directorate of Security and Intelligence of the RCMP. The RCMP is basically a unique uniformed para-military police force with many very important virtues. Its members are carefully selected, highly motivated and of great integrity. Its recruiting, indoctrination and training policies are generally oriented toward its police function. The Force's personnel policies are based on recruiting young men between the ages of 19 and 28 as Regular Members. The training process through which they pass is intended to provide them with the instruction necessary for their police duties and to steep them in the traditions of the RCMP, which are fundamentally those of a police force.

52. At present all the Regular Members of the Directorate of Security and Intelligence are drawn from personnel recruited and trained under normal

RCMP procedures, although they are not selected for security employment until they have had at least three years experience in police duties and have received special training. There is at present no effective programme of post-university recruiting, even for the more demanding tasks in the Force (which would, of course, include many duties concerned with security), and in practice a potential recruit who has attended a university is faced with disincentives. Little allowance is made during recruit training and during initial duties in the Force for possession of a degree.

53. These policies and practices mean in the first place that the RCMP is cutting itself off from the whole of that group of potential recruits who attend a university—in other words and in general terms, from those potential recruits who are likely to possess the most intelligence, initiative and imagination. We do not suggest that a university education is a necessary guarantee of intelligence or character, but it is quite clear that at present there is a greater likelihood of finding suitable recruits for complex and sophisticated duties among those young persons who have attended universities than among those who have not. This fact will assume increasing significance as a larger proportion of young people continue their education beyond high school levels. Neither would we wish to imply that all the duties that need to be carried out by a security service demand a high level of sophistication and intelligence. We do believe, however, that such attributes are of great importance in an area of considerable sensitivity which can often require imagination, tact, high professional standards and complex decision-making. We are reinforced in this view by the special care taken in other countries with the recruiting and training of officers concerned with security duties, and we find it difficult to believe that officers with the background and training of those in the RCMP will be able to meet the increasingly complex challenges in the field of security that are to be expected in the future.

54. We acknowledge that there is in existence a programme whereby some suitable members of the RCMP are sent to university at public expense after some years in the Force. In addition, we are informed that plans have recently been developed to commence a recruiting programme at universities in 1969. The commencing salary of these recruits will be higher than the salary of those recruited directly from high school and, while recruits from universities will undergo the same training and indoctrination programme as high school recruits, they will be expected to advance more rapidly in the Force if they demonstrate superior ability. Undoubtedly, both these schemes are or will be useful measures, although we have some doubt about the potential for success of the university recruiting programme under the conditions now envisaged, but we feel that neither can be a substitute for a regular professional recruitment programme. There are many areas of activity (banks and railroads, for example, and some police forces) that have in the past confined their recruitment to young men with lower levels of education; almost all such organizations have been forced by circumstances to adapt to the changing patterns of society.

55. Whatever the merits of the present system as a source of recruits for police duties, we think it quite wrong that recruiting for a security service should be tied tightly to a recruiting and training system generally oriented towards the requirements of a police force. Apart from a similarity in some investigative techniques, the differences between police and security duties seem to us to be wide. Police forces are concerned primarily with law enforcement, including post facto investigation, with the collection of evidence, and with the prosecution of crimes. Security services are primarily engaged in preventive activities and the collection of intelligence. A security organization will almost inevitably be hindered in its operations by the lack of flexibility inherent in a police force such as the RCMP. We feel, in short, that the professional security service officer is quite different from the professional policeman and that this difference should be reflected in recruiting methods, in training and career patterns and in organizational structures.

56. These questions of the characteristics and style of the RCMP as a Force and the long-term effects of present recruiting policies have been central to our thinking on the issue of organization. The second factor we have considered touches on a problem of great difficulty: the measurement of the effectiveness of a security service. For obvious reasons, any direct measurement is almost impossible, especially in the important fields of counter-espionage and counter-subversion, and our first point concerning effectiveness is general and subjective. Although the role of the RCMP is admittedly ill-defined, and recognizing that government policy has been inhibiting, we are not sure that the RCMP has made a sufficient, or a sufficiently sophisticated, effort to acquaint the government with the dangers of inaction in certain fields. We are left with the impression that there has been some reluctance on their part to take desirable initiatives and some inadequacy in stating the case for necessary security measures in interdepartmental discussions at the higher policy-making levels. A specific area in which the effectiveness of the RCMP does appear to us to be capable of improvement involves personnel investigations. These seem sometimes to be conducted with a certain lack of tact and imagination, while reports and briefs to departments are often somewhat stereotyped. We can appreciate the problems of a departmental security officer forced to make decisions on the basis of such reports. On the other hand, it must be stated that very few errors of fact or mistakes have come to light—most of the apparently contentious cases that have been made public have arisen from misunderstandings of one kind or another, or have been the result of improper comment by departmental officials who have stated or implied to a concerned individual that "security" was the reason for some administrative action when this was in fact not so.

57. In addition, we think it probable that the association of the security function with the police role tends to make the work of the security authorities more difficult. The suggestion has been made (and we tend to agree with it) that inquiries by civilians in connection with the security clearance of personnel would be regarded with more understanding than are inquiries by

policemen; in particular it seems quite likely that many of the objections to investigations on university campuses have stemmed from the fact that these inquiries are conducted by policemen, rather than from the fact of investigation itself. Furthermore, there is a clear distinction between the operational work of a security service and that of a police force. A security service will inevitably be involved in actions that may contravene the spirit if not the letter of the law, and with clandestine and other activities which may sometimes seem to infringe on individuals' rights; these are not appropriate police functions. Neither is it apropriate for a police force to be concerned with events or actions that are not crimes or suspected crimes, while a security service is often involved with such matters. Generally, in a period in which police forces are subject to some hostility, it would appear unwise either to add to the police burden by an association with security duties, or to make security duties more difficult by an association with the police function.

58. These factors have led us to examine alternatives to the present organizational arrangements. One option we considered was that the Directorate of Security and Intelligence should become organizationally and operationally detached from the RCMP to a greater or lesser extent, while remaining under the nominal administrative aegis of the Force. However, it seems clear to us that the security service would need to adopt recruiting, training, professional and operational policies quite different from those of the rest of the police corps, its head would have responsibilities to the highest levels of government quite separate from those of the Commissioner of the RCMP, and in the long term the majority of its personnel (including probably its head) would be civilians and not RCMP officers. Although some such solution as this has attractions we find it difficult to believe that it would be organizationally satisfactory or stable. On balance, the best solution seems to us to be the creation of a new non-police agency to perform the functions of a security service in Canada. This agency would eventually be quite separate from the RCMP, although it would, when necessary, operate in close liaison and cooperation with the RCMP and other police forces. The organizational and operational detachment of the Directorate of Security and Intelligence from the RCMP may be a necessary first stage in the process of development of the new agency.

59. We are aware that certain arguments have been raised in the past against the creation of a civilian security agency; we feel these should be answered before we consider the details of a new organization. One important argument is the suggestion that any new civilian service would readily be penetrated by hostile intelligence services. This is a most serious matter, for a penetrated security service is not merely ineffective, but is also an active danger to its own country and to its allies. It is undoubtedly true that the risk of penetration could be greater in a new organization of the kind we envisage than in the existing organization, especially as it will be recruiting at a somewhat unfavourable time; the prevailing political sentiment of the nation cannot be said to be generally sympathetic towards the objectives and

activities of a security service. Nevertheless, we feel that the problem of penetration is soluble as long as the new organization takes rigorous steps to reduce the risks by very careful recruiting and by, for example, employing recruits "under report" in less sensitive environments for months or years until it has become apparent that they are worthy of transfer to more sensitive areas. In addition, it is clear that a new security service would initially employ many of the individuals now working in the Directorate of Security and Intelligence.

60. A second argument suggests that only the RCMP is spread sufficiently widely across Canada to constitute an adequate service. However, nearly half of the population of Canada is already concentrated in 20 metropolitan urban areas, and it is estimated that by 1980 one-third of Canadians will live in three urban areas and some 60 per cent in about 30 major city complexes. We realize nevertheless that any civilian security service would have to place some reliance on the assistance of the RCMP and other police forces in more remote areas of the country. A third argument arises from the relationships which the RCMP has built up over the years with security services and police forces in foreign countries. We have however heard nothing to suggest that the creation of liaison arrangements between a new Canadian security service and foreign security services would present insuperable problems. Clearly, these relationships have built into them an element of trust, and it would take time for the new service to establish an appropriate environment; but again the initial stages of development would be eased by the fact that many of the same individuals would be employed on these duties.

61. Finally, there is the question of administrative difficulty. Certainly, the creation of a new service will pose certain administrative and financial problems, and these will be exaggerated by the inevitable requirement that the service should be free of some of the normal controls. It would for example require almost total freedom in the recruiting and discharge of personnel. There would clearly be some new overheads that are at present not incurred because of the association of the security service with the RCMP; on the other hand we think that certain economies might be introduced in a civilian organization that are not at present possible. On balance we see no reason why the new Service should cost more in terms of money and manpower than the present Directorate of Security and Intelligence of the RCMP.

62. It is quite clear that the establishment of a new service will take time, and that it must be built upon what already exists, especially as there will be an overriding requirement to ensure that no degradation in effectiveness takes place during the planning and changeover period. We would visualize a deliberate and probably lengthy process of change, in the course of which the head of the new organization would be appointed and allowed to plan the development of the new agency and its changing relationships with the RCMP. As we have said, the new organization will have to continue close liaison and collaboration with the RCMP, as well as with other police forces.

63. We have considered arrangements that might be appropriate for the control of the Security Service. Although the Service must remain part of the executive arm of government and must be generally responsive to the orders of the government, arrangements must be made to provide the Head of the Service with some independence, especially in circumstances in which he may feel that orders (to provide information, for example) may be inappropriate. This independence must rest on some security of tenue, perhaps similar to that held by the Governor of the Bank of Canada, and upon clear and public terms of reference which include provision for the disclosure of information at his discretion. We suggest that they should generally include the following tasks:

(*a*) to collect, collate and evaluate information or intelligence concerning espionage and subversion, and to communicate such information in such manner and to such persons as the Head of the Service considers to be in the public interest;

(*b*) to be responsible for the direction, coordination and implementation of counter-espionage and counter-subversive operations in Canada;

(*c*) to be responsible for security investigations concerning civilian personnel employed by the Government of Canada, and other persons as required;

(*d*) to be responsible for the inspection of security precautions in departments throughout the Government of Canada and elsewhere as required, and for the provision of training and advice for departments of government and other agencies on matters concerned with security;

(*e*) to be responsible for the operation and coordination of all technical security measures;

(*f*) to cooperate and liaise as may be necessary with domestic, Commonwealth and foreign police forces and security services.

We would envisage that the new Service would generally be without law enforcement powers, and would rely upon police cooperation when such powers were required.

64. We have also considered in some detail the arrangements by which the Security Service should report to the government. At present the Director of Security and Intelligence reports through the Deputy Commissioner (Operations) to the Commissioner of the RCMP, who in turn reports to the Solicitor General. In our view the Head of the new Security Service should certainly have the right of direct access to the Prime Minister when the occasion arises, although as a practical requirement it is probably desirable that he should be responsible at least for day-to-day operations to a Cabinet Minister other than the Prime Minister.

65. In addition, because of the concern of Parliament and the public in the general area of security, we think that an effort should be made to provide some public reassurance that the activities and operations of the Security

Service are not immune from responsible scrutiny apart from that exercised by the government of the day. We have considered alternative ways of providing this reassurance, including a parliamentary committee and a committee of senior public servants. We have discarded the first of these possibilities, partly because we think that the legislature should not be directly involved in these executive matters, and partly because, if the committee were to carry out its tasks in a meaningful way, its members would need formal security clearance. On general grounds we think it inappropriate to subject private Members of Parliament to these procedures, and in addition we foresee great complications if a Member nominated by a political party were ever deemed unacceptable on security grounds. We also feel that a committee of public servants, however senior and distinguished, would not necessarily be regarded by Parliament or the public as effectively independent of the government of the day.

66. However, in Chapter IV we suggest the creation of a Security Review Board to deal with the review of certain administrative decisions on personnel cases. We imagine that the members of this Board would acquire considerable expertise in the field of security policy, and that they would also command public respect. We suggest that the terms of reference of this Board should include provision for receiving and considering annual or semi-annual reports from the Head of the Security Service, and that the Board should have authority to draw to the direct attention of the Prime Minister any matters it considers appropriate. This function would not be inconsistent with the role of reviewing administrative decisions. We would not suggest however that the Board should in this role be accessible to the public and thus come to perform an "Ombudsman-like" function. If a federal Ombudsman or Parliamentary Commissioner eventually came to be appointed, his role in relation to the general field of security decisions would need separate consideration.

Departmental Security

67. Security organizations within departments vary widely in adequacy. Standards of security discipline are equally varied and could in many cases be improved. Generally, the Canadian security system is insistent upon the individual responsibility of departments and agencies, and the observance of this principle has clearly led to the present varying standards of departmental security. One alternative to present arrangements would be a professional centralized system under the direct control of the Security Service, with officers in each department owing a form of dual allegiance to the department in question and to the Security Service. In many ways this would approximate to the situation that now exists throughout the government structure in other "service" areas—financial control, health and welfare services and printing services, for example. Although some such system has superficial attractions, we are inclined to believe that these attractions are illusory. It is probable that the transfer of total responsibility in such an area as security from departments to an extra-departmental agency would encourage the common ten-

dency to regard security as a matter apart from the normal business of the departments and thus a subject of no concern to the general body of departmental staff.

68. We feel in brief that a general policy of departmental responsibility is necessary if an adequate standard of security is to be achieved, but there are a number of prerequisites which must be fulfilled if the system is to operate effectively. In particular each department must prepare security regulations in accordance with its own requirements, and create an effective security organization, headed by a trained security officer at an adequate level of seniority within its structure and appropriately related to the rest of the departmental organization. We feel it of special importance that senior departmental officials, and especially deputy ministers and heads of agencies, should regard it as one of their personal responsibilities to ensure that their departments have effective security organizations and regulations; security measures must be seen to have support at the highest departmental levels.

69. A primary requirement of course is that each department or agency should have the services of a trained security officer. Security appointments should not (as is unfortunately sometimes the case) be regarded as positions for people without much hope of further advancement. We do not suggest that all those who take part in departmental security duties can make a full career in security, but we do feel that a tour of duty as a full-time (or sometimes part-time) departmental security officer should be an accepted part of the process of development of potential senior public servants.

70. We have in fact found few departments where security officers and staffs are adequate in strength, calibre, status or training. We have no firm views as to the specific place which the security officer and his staff should hold in the departmental structure, but we are quite clear that he must be sufficiently senior to have direct access as required to the deputy minister, and to exert influence over heads of branches or departmental sub-units. We realize the organizational simplicity of including security amongst the duties of the senior personnel officer of a department, but we are not sure that this solution is right, because of the conflicts of interest that are likely to arise. In many cases we would prefer the security officer of a department to be outside the departmental line organization and to be in a position to fulfil an "audit" role within the department. In practice, this would mean that the security officer would become a security adviser to the deputy minister, and would carry out his responsibilities from this position.

71. Many departments of government, some of which are concerned with classified material, have branches with separate functions and establishments in many different localities. The head of each branch or out-station should be personally responsible for the security of his operation or facility, and will normally need a full or part-time security officer on his own staff. These security officers should be responsible also to the chief departmental security officer.

72. Adequate training facilities should be made available for departmental security staffs by the Security Service and, what is more, departments must be compelled to take advantage of these facilities. In addition, special courses or seminars should be held at intervals for senior officers with security responsibilities. Within departments, emphasis should also be placed on a continuous educational programme directed towards ensuring that the general body of public servants is aware of the need for security measures and that those concerned with classified material are adequately indoctrinated. We have been impressed by the success achieved in other countries in educating and indoctrinating public servants in these matters, and we think that a much enlarged effort is required in Canada.

73. Further, positive arrangements should be made for expert advice and information to be readily available to departments, and departments should be compelled to seek this advice. For example, the protective security branch of the Security Service might accredit liaison officers to departments or groups of departments, and we would not rule out the possibility, in particularly complex or difficult circumstances, that officers of the protective security branch of the Security Service should be seconded for periods of time to departmental staffs. This may be especially necessary if occasions arise when widespread changes or improvements, such as those suggested by this Report, are being undertaken.

74. Finally, there should be comprehensive arrangements for extra-departmental inspection, audit and sanctions. We suggest that the protective security branch of the Security Service should be responsible for auditing the effectiveness and adequacy of security arrangements within departments, and taking such action as may be necessary and appropriate (either directly, through the Security Secretariat and the Secretary to the Cabinet, or through the appropriate minister) in cases where departments have unsatisfactory security postures or procedures.

75. We would emphasize that we regard the provision of expert advice to departments, the inspection and audit of departmental security procedures, and the training of departmental security officers as matters of urgent importance. As we have suggested, if a new Security Service is established, these general protective security roles should fall within its terms of reference. In the meantime, however, we feel that immediate arrangements must be made for the roles to be performed more effectively. Interim arrangements should certainly ensure that the Privy Council Office and the Directorate of Security and Intelligence of the RCMP have clear joint responsibilities in these areas. Probably the RCMP should assume responsibility for training, inspection and audit, while the Privy Council Office should assume responsibility for advice and for taking such steps are possible to ensure departmental compliance. Departments must cooperate by seeking advice and, with the assistance of the security authorities, ensuring that effective departmental security structures and procedures are brought into being.

IV. SECURITY, PRIVACY AND THE INDIVIDUAL

General Considerations

76. The problem posed by the impact of security procedures on individual members of society is of course one of the central issues of our inquiry. In the general area of individual freedoms, concern has been expressed in recent years over invasions by the state, as well as by private individuals and organizations, of what has come to be called the "right of privacy". The range of apparent problems is broad, and includes such matters as the use of telephone interception, electronic intrusion devices, long range cameras and other sophisticated equipment by police and governmental agencies in the course of detection and investigation of criminal offences and security matters; the collection and recording of information about individuals and organizations for the purpose of security "screening"; the use of such devices as the polygraph and the breathalyzer by the police; the use of closed circuit television and eavesdropping devices to supervise employees or to assist with the entrapment of consumers; the use of psychological tests and questionnaires by prospective employers, and in schools without parental knowledge or consent; the accumulation and storage of personal data in computers by the state.

77. Two aspects of this general area of concern seem to us to fall within our terms of reference. The first of these is the use of certain investigative techniques for the purposes of counter-espionage or counter-subversion operations and for the acquisition of intelligence; this we review in Chapter X. The second is the investigation of personnel for the purpose of security screening and clearance; this we deal with below.

78. We must first state that we consider personnel security and personnel screening of central importance to an effective security system. Some dependence may be placed upon physical security measures and upon the enforcement of regulations, but ultimately the reliability and discretion of individuals is the base upon which all true security must rest. This is especially true now that advances in technology—the advent of rapid copying equipment and sophisticated electronic devices, for example—have made it almost impossible to devise effective physical protection against a determined individual with modern equipment. We think that all persons, without exception, should be subjected to the security screening process before being allowed access to classified material. Those to be screened should include appropriate em-

ployees of Canadian Government departments or agencies, members of the armed forces and the RCMP, ministerial appointees, members and staffs of task forces, consultants, university faculty members working on classified research contracts or handling classified material, persons employed in industry concerned with classified contracts, and so on. The necessary procedures consist essentially of two parts: first, the acquisition of data about the past history of an individual; and secondly, an attempt to forecast the individual's future performance or reliability on the basis of this data.

79. We have little sympathy with the more extreme suggestions that inquiries about persons should not be undertaken because of the individual's "right of privacy", nor with the view that the process of personnel investigation by the State is alien to normal and democratic practice, nor with the general premises that any individual has a right to employment within the public service or a right of access to classified information. We think that all employers—even governments—have a right to be selective in hiring employees as long as selections are made upon a sound and equitable basis. What is more, investigation of applicants for employment is a normal practice, as is investigation for credit or insurance purposes. References are required or referees are consulted. Many firms make credit bureaux checks of prospective employees, and we understand that some have relationships with local police departments which enable them to acquire at least negative data. Many firms "bond" employees, and this involves investigation. Some make use of psychological tests and interviews in an attempt to assess aptitude. The general process of data acquisition as a basis for forecasting the future performance or reliability of a prospective employee is widespread, well-understood and generally accepted. The state's procedures only differ in comprehensiveness and formality from those generally employed in one form or another by responsible employers in the private sector.

80. Neither does an individual have a right to confidence; on the contrary, access to classified information is a privilege which the state has a right and a duty to restrict. We believe that the real rights of individuals are of a rather different order. We feel, for example, that persons should be told that they are to be subjected to inquiries for security clearance, and have a right to expect that any inquiries made about them should be made by competent and trained investigators, and that any decisions made about them should be made carefully, in a consistent and equitable framework, and on the basis of procedures that are not incompatible with the concepts of natural justice and with national style and tradition.

81. On the other hand, in order not to imperil sources of information adverse decisions must sometimes be taken about individuals without revealing to the person concerned full details of the reasons or the supporting evidence. It is sometimes necessary to refuse to employ an individual, or to transfer him or even to discharge him, because after the fullest investigation doubts about his reliability remain even though nothing may have been

proved by legally acceptable standards. Such doubts must be resolved in favour of the state rather than in favour of the individual, or at least some greater weight must be attached to the interests of the state than would be appropriate in legal proceedings. Also, people employed in sensitive environments may in certain circumstances be subject to unusual regulations concerned perhaps with search of their persons or restrictions on travel.

82. In our view, there are no simple or legalistic solutions to problems of these kinds, but only ad hoc checks and balances. Experience in the United States (where almost complete reliance is placed upon due legal process and the full force of the law can be invoked to rule upon almost any administrative decision) would suggest that there are no sensible or practical organizational or other arrangements which can provide absolute protection to all individuals against apparent occasional restrictions of their rights.

83. Further, just as normal legal processes occasionally lead to injustices, so will security procedures. Usually persons do not suffer in legal proceedings because of arbitrary judgment; if they suffer, they do so only because of the nature of the system and the content of the law itself. Similarly in security procedures extreme care must be taken to ensure that if the interests of an individual are prejudiced they are prejudiced only because of an overriding requirement and not because of lack of care. Whatever arrangements may be made in an attempt to protect the rights of the individual, ultimately his most important right—to fair, equitable and careful treatment—will depend upon the existence of policies and procedures scrupulously formulated in accordance with national style and traditions, and consistently executed and enforced by competent and trained personnel of great integrity.

84. Before proceeding to an examination of screening procedures, we should note that the remainder of this chapter is largely concerned with civilian government employees. In many instances, however, the comments and suggestions we make are also applicable to members of the armed forces and to persons employed in classified work in industry; we do however devote later chapters to special problems in these areas. Somewhat similar procedures are applied to most applicants for immigration or citizenship, and many of the general remarks in this chapter apply here also, although again we devote later chapters to a more detailed consideration of these matters.

Acquisition of Data

85. There are five methods by which data that is relevant to an individual's reliability can be acquired: checking of available records; written inquiries; personal inquiries; physiological or psychological tests; and personal interviews.

(*a*) *Records Checks.* Minimal investigative procedures include the checking of readily available records such as RCMP subversive and criminal records, government personnel files where previous service is claimed, and immigration or citizenship files where appropriate.

(*b*) *Written Inquiries.* Written inquiries seek information about an individual's reliability, character, associations, experience and education from former employers and supervisors, from schools and universities, and from referees.

(*c*) *Personal Inquiries.* Personal inquiries (so-called "field investigations") fall into two parts. First, an effort is made by means of personal interviews with former employers, associates, school or college teachers or supervisors, neighbours or appropriate local agencies to check and confirm the details of his past life that an individual has listed on a comprehensive personal history form. Secondly, use is made of these interviews to elicit information concerning character, habits, morals, reputation or associations, as well as "leads" for further interviews. If adverse information is elicited, further investigation is concentrated on this particular area in an effort to confirm, deny or expand it. Clearly this is a highly subjective and in some ways objectionable process, but in spite of considerable effort no substitute for it has yet been devised. It seems to us however of special importance that the inquiries should be made and any resulting reports prepared by mature, experienced, sophisticated and trained officers, working under strict supervision, and that only significant information should be recorded. We are impressed by the care with which personnel investigators are selected, trained and supervised and their reports considered, checked, balanced and revised in some countries. We cannot emphasize too strongly that, if an individual's rights are to be protected, and cooperation obtained from such important sources of information as universities, personnel investigations of this kind must be regarded as duties requiring persons of high calibre and considerable skill and experience.

(*d*) *Tests.* It would be an ideal situation if it were possible to process an individual through a series of more or less mechanistic tests, and arrive at an objective judgment of the subject's future loyalty, reliability and character. Unfortunately, we are informed that this is not possible, nor likely to be possible in the foreseeable future. Some reliance can however be placed on certain types of psychological testing in special circumstances.

(*e*) *Personal Interviews.* Opinion is divided on the relevance and propriety of personal contact between an investigator and an individual under investigation. Our own view is that each case must be considered on its merits. If areas of concern appear in the course of investigation, there seems no reason why attempts should not be made to resolve them by interview, unless they appear to be of such significance as to make it apparent that clearance is almost certainly impossible or the situation is such that a confrontation appears unlikely to be rewarding.

86. Clearly, many combinations of these five techniques are possible, and in fact actual procedures vary quite widely. In Canada, present arrangements appear to be somewhat inconsistent. In the first place, it is clear that many persons are recruited for classified employment before checks are completed, and may even be given access to classified material before the results of any checks are available. This procedure is said to be due to the exigencies of recruiting, but is nevertheless inexcusable. Secondly, records checks are conducted with some informality and inconsistency. Fingerprints are not consistently obtained from all applicants for classified employment, nor at all from industrial workers on classified contracts, and in the absence of fingerprints fully adequate criminal records checks are impossible. Inquiries of referees are very limited, even in the context of personnel selection. It is unusual for previous employers to be consulted in the absence of a field investigation. Further, the requirement for a field investigation differs in different parts of the government. Some departments require such an investigation for a so-called "Secret" clearance, and some require it only for "Top Secret" clearance. Subjects are interviewed by the security officers in some departments and not in others.

87. There is a further area in which Canadian procedures seem to us somewhat inflexible, and this is in the relationship between security investigation and screening procedures on the one hand, and the personnel selection process on the other. The policy on this subject is that a person to be appointed to a permanent position in the public service will not normally be made the subject of security screening for this reason alone. However, whenever a person to be appointed to such a position is, in the opinion of the deputy minister or head of agency concerned, likely to be required eventually to have access to classified information, that person shall before being given a permanent appointment be made the subject of at least a rudimentary security check. In fact, as far as we can determine, only the most limited investigation of prospective members of the public service is conducted by the Public Service Commission in the absence of a requirement for security screening. Sometimes qualifications are confirmed; occasionally referees are consulted. Personnel selection decisions are made largely on the basis of a personal interview. What is more, in spite of the stated policy it appears unusual for any security screening to take place in anticipation of a possible future requirement for access to classified information, except in the armed forces and a few other departments and agencies.

88. In the United States Government a very different practice is followed. Investigations are conducted by the Civil Service Commission as part of the normal procedures for obtaining sufficient data to assess the suitability of candidates. The Bureau of Personnel Investigations of the Commission is responsible for the whole process of obtaining or confirming all the facts, both favourable and unfavourable, that bear on an individual's suitability for employment. It carries out this responsibility by means of records checks or field inquiries, and it evaluates the significance of the information it de-

velops in consultation with employing departments. All applicants for the United States public service, whether or not they are to be employed in sensitive positions, are subjected at least to records checks. The object of this programme is to give effect to the Government's responsibility for maintaining the quality of the public service at a high level and for implementing a meaningful merit system in which all factors bearing on suitability are considered.

89. We can see many advantages in the institution of a formalized effort to acquire, in the context of personnel selection, elementary data about every applicant for employment in the public service, whether or not he or she is to be employed on classified duties. Adverse reports would of course not necessarily be reasons for rejection, but the process of inquiry should help to avoid the unfairness inherent in a situation in which a candidate is able to conceal relevant but adverse information merely because the government makes little effort to check details of background and record. In addition, even if an individual were being initially considered for a non-sensitive appointment, some data would be available to indicate whether or not problems relating to clearance were likely to arise at a later stage when access to classified material might be vital for promotion or transfer. In the absence of such procedures, increasing mobility within the public service seems likely to lead to growing numbers of problem cases. Further, inquiries concerning individuals may become somewhat more acceptable if conducted in the context of personnel selection rather than security investigation.

90. We have examined the present procedures for investigation and clearance, and have reached the conclusion that they could with advantage be amended on the following lines. These suggestions extend records checks to all members of the public service, and add certain elements of formality to the procedures for granting access to classified material.

(*a*) *Persons to be employed in the public service.* Before a person is employed in the public service his name should be checked against the subversive records and he should be the subject of a fingerprint check against criminal records. Adverse information need not result in rejection, but the information should at least be made available to the employing department, which can request further inquiries if these appear to be necessary.

(*b*) *Persons to have access to Secret (and Confidential) information.* Before a person is given access to Secret or Confidential information he should be the subject of comprehensive records checks (including subversive records, criminal records, all relevant federal departmental records, credit bureaux records and foreign records where necessary and possible). Where written inquiries to referees or previous employers have not been made as part of a personnel selection process, this should be done. If these steps produce no adverse information, access may be granted to Secret or Confidential informa-

tion after a formal and recorded departmental judgment that this access is necessary and desirable. If however any significant adverse information is developed, further investigation (including field inquiries) should be undertaken by the Security Service to confirm or resolve doubts. After inquiry, the case should be referred by the Security Service (with a recommendation—a point to which we shall return) to the department for decision.

(*c*) *Persons to have access to Top Secret information.* Before a person is given access to Top Secret information he must be the subject of a similar comprehensive records check and a full field investigation covering a period of at least the previous ten years of his life or the period from age eighteen, whichever is shorter, and a formal and recorded departmental judgment must be made that this access is necessary and desirable.

(*d*) Clearance to Secret and Top Secret levels should be formally updated at regular intervals, Secret clearances by means of records checks and consultation with departmental supervisors, and Top Secret clearances by means of further field investigations. Security clearances should not be thought of as in any sense permanent, and in between these up-datings supervisors of personnel handling classified matters and departmental security officers should concern themselves, if necessary in consultation with the Security Secretariat and the Security Service, with cases in which possible doubts have come to notice.

91. We have already referred to one specific inconsistency in present regulations—that fingerprints are not required from industrial workers for whom clearance is needed. In our opinion there is no reason for any distinction between industrial workers and public servants in this respect. We regard fingerprints simply as a means of identification, comparable perhaps to photographs. We can see no validity in objections to the taking of fingerprints and the retention of fingerprints on file. In addition, we understand that plans are being made to "vacate" and seal original criminal records after relatively short periods and to make these sealed records available only for specific reasons. We consider it of great importance that the full records should be available for security screening purposes, although we would agree that only the recent "unvacated" records should be used in the case of applicants for employment in which access to classified information is neither necessary nor likely to be necessary in the future.

Reporting of Data

92. Once data about an individual has been acquired, it must be reported to the decision-making authority, which is the employing department. The present practice is for the RCMP to summarize the results of its records checks and investigations in the form of somewhat stereotyped letters or

"briefs" with little or no explanation of the significance to be attached to any given item of information, and very often with data summarized to such an extent as to be difficult to assess. We feel that this process of summarization is wrong in principle. There will clearly be occasions (although we suggest there are likely to be few in the area of personnel screening) when protection of sources must be considered of paramount importance, but the principle should be that decisions are made on the basis of all relevant information, although the means by which and the conditions under which the information is made available to the departmental decision-makers may vary. In general one of the most important functions of the protective security branch of the Security Service should be to ensure that all relevant information is made available to departments in as complete a form as possible.

93. In addition, the Government has taken the firm view that the RCMP should do no more than provide basic information to departments concerning the clearance of individuals, and that the Force must play no formal part in the decision process itself. In a sense, the concept of departmental responsibility has been extended to support the position that the RCMP should not be asked to advise formally on the significance of the information it provides. The ostensible rationale for this attitude is somewhat mystical; it is alleged that provision of this advice would tend to edge the nation closer to a "police state". We feel the real rationale is much more practical: the ability to dissociate activities concerned with personnel investigation from the results of personnel judgment has obvious advantages as a public posture.

94. We think this policy is wrong, for two reasons. First an organization which provides data should bear some responsibility for the implications and significance of that data. Such a responsibility adds to the compulsion to be accurate and objective. Secondly, the present policy deprives the decision-maker of the sole source of professional advice on the significance of subversive associations and the main source of professional experience on the meaning and relevance of character defects and other factors. It seems to us that this deprivation is as likely to be detrimental to the individual as it is to be disadvantageous to the state. We agree that the final responsibility for decision-making must rest with the departmental authorities; we nevertheless believe that the Security Service should have a duty to provide meaningful advice to help with the decision, and that it should do this not only by providing as full information as possible but also by commenting on the importance and significance of the information it provides and by making formal recommendations concerning clearance.

The Decision Process

95. Whatever arrangements are made to provide data and advice, at some point a decision to grant or withhold clearance must be made on each individual case. This decision involves estimating the possible future behaviour

of an individual on the basis of his past history. The process is difficult enough in the case of an applicant for employment, when the sole administrative effect of an adverse decision will be the refusal of employment, or the selection of another individual from an eligible list. It is even more difficult if it relates to a person already employed, when an adverse judgment may lead to transfer, non-promotion, inhibition of career, suspension or even dismissal, and, what is more, may involve the department in a lengthy train of administrative negotiations and difficulties concerned with hearings and reviews.

96. A great deal of conceptual consideration has been devoted to definitions of loyalty and reliability, to the relationship of loyalty to security and to the relevance of certain so-called character defects to either loyalty or reliability. In practice, we feel that the initial basis for decision must be a set of criteria against which the history of the individual is measured. It is a truism that no set of criteria can meet all cases, and that a large element of subjective judgment must eventually be applied in very many cases, but nevertheless the relevance and adequacy of the criteria seem to us to be of the first importance.

97. As we have suggested, we feel that all persons who may have access to classified information in the performance of their duties must be persons in whose reliability the government can repose full confidence. It has in our view been clearly demonstrated that such confidence cannot be placed in persons whose loyalty to Canada and our system of government is diluted by loyalty to any communist, fascist, or other legal or illegal political organization whose purposes are inimical to the processes of parliamentary democracy. Therefore, persons in the following categories should not be permitted to enter a position in the public service where they may have access to classified information or are likely to have opportunities to gain such access:

(*a*) a person who is a member of a communist or fascist party or an organization affiliated with a communist or fascist party and having a similar nature and purposes;

(*b*) a person who by his words or his actions shows himself to support a communist or fascist party or an organization affiliated with a communist or fascist party and having a similar nature and purpose;

(*c*) a person who, having reasonable grounds to understand its true nature and purpose, is a member or supports by his words or his actions an organization which has as its real objectives the furtherance of communist or fascist aims and policies (commonly known as a front group);

(*d*) a person who is a secret agent of or an informer for a foreign power, or who deliberately assists any such agent or informer;

(*e*) a person who by his words or his actions shows himself to support any organization which publicly or privately advocates or practices the use of force to alter the form of government.

It must be borne in mind that there may be reasons to entertain doubts about persons who at some previous time fell into one or other of these categories, even though these doubts may not be confirmed by more recent information.

98. In addition, a person may be unreliable in the context of security for a number of reasons other than associations or activities such as those described in the previous paragraph. To provide greater assurance of reliability, persons in the following additional categories should not be permitted to have access to classified information unless after consideration of the circumstances the risk appears to be justified:

(*a*) a person who is unreliable, not because he is disloyal, but because of features of his character which may lead to indiscretion or dishonesty, or make him vulnerable to blackmail or coercion. Such features may be greed, debt, illicit sexual behaviour, drunkenness, drug addiction, mental imbalance or such other aspects of character as might seriously affect his reliability;

(*b*) a person who, through family or other close continuing relationship with persons described in paragraph 97 above, is likely to be induced, either knowingly or unknowingly, to act in a manner prejudicial to the safety and interest of Canada; it is not the kind of relationship, whether by blood, marriage or friendship, which is of primary concern, but the degree of and the circumstances surrounding the relationship, and most particularly the degree of influence that might be exerted, which should dictate a judgment as to reliability;

(*c*) a person who, though in no sense disloyal or unreliable, is bound by close ties of blood or affection to persons living within the borders of such foreign nations as may cause him to be subjected to intolerable pressures.

99. There are four points we would like to raise concerning these criteria. The first concerns homosexuality, the second Quebec separatism, the third the relevance of student activities at college or university, and the fourth the security clearance of aliens or former aliens.

100. The question of homosexuality is a contentious area, especially as social mores change. It is a fact, demonstrated by a large number of case histories, that homosexuals are special targets for attention from foreign intelligence services. What is more, there seems to us clear evidence that certain types of homosexuals are more readily compromised than non-deviate persons. However, we feel that each case must be judged in the light of all its circumstances, including such factors as the stability of the relationships, the recency of the incidents, the public or private character of the acts, the incidence of arrests or convictions, and the effect of any rehabilitative efforts. In general, we do not think that past homosexual acts or even current stable homosexual relationships should always be a bar to employment with the public service or even to low levels of clearance. We do feel however that, in the interests of the individuals themselves as well as in the interests of the state, homosexuals should not normally be granted clearance to higher levels, should not be recruited if there is a possibility that they may require such clearance in the course of their careers and should certainly not be posted to sensitive positions overseas.

101. The problem of separatists is equally contentious, and we suggest that security policy concerning separatism should be made clear. We can see

no objection to the federal government taking (and being seen to take) steps to prevent its infiltration by persons who are clearly committed to the dissolution of Canada, and who are involved with elements of the separatist movement in which seditious activity or foreign involvement are factors. We feel that information concerning membership in or association with extreme separatist groups should be reported on the same basis as information concerning other allegedly subversive movements, and that the departmental decision process should be similar. We are of course aware that there is a wide spectrum of activity relating to separatism, ranging from overt political activity to clandestine terrorist planning and action, and we do not for a moment suggest that all persons who have been associated with overt and non-violent groups should be excluded from federal employment. We see no reason however why the federal government should employ (especially in sensitive areas) persons who appear to be actively committed to an extreme separatist position. At the very least we feel that a decision to employ such persons should be taken only on the basis of a knowledge of their records.

102. A third issue concerns the importance which should be attached by the Security Service or the decision-makers to the activities of young persons at universities. The point is made that universities are traditional homes of free thought and protest, and that the positions taken by young and inquiring minds should not be held "against" them in later years. We agree with this point of view. Questionable university associations or activities should not necessarily bar an individual from government or sensitive employment, although such activities may well be relevant in any later investigation.

103. We are however somewhat disturbed by the tendency in certain university circles to use the plea of academic freedom to substantiate claims to inviolability and to privileged immunity from normal security procedures. In the first place, we can see no objection to inquiries at universities concerning persons who are seeking government employment or security clearance. In fact, we regard such inquiries as of special importance because the products of universities are more likely than other persons to reach sensitive and influential positions. In any case, university authorities can be said to have the same status as "previous employers" and should accept inquiries about students on this basis. We see no reason why any immunity should be accorded to members of faculties or student bodies who engage in subversive activities. We do believe however that all inquiries at universities should be conducted by mature, experienced and sophisticated investigators and be the subject of sensible and balanced reporting. The Security Service should take special care not to interfere with freedom of thought and discussion, to avoid random inquiries concerning student activities, and to avoid overemphasizing the importance of such activities.

104. Fourthly, we note that the clearance of aliens or former aliens presents problems, which have become of significance now that aliens are enter-

ing the public service in growing numbers. We feel that definite rules must be established to deal with this question, and we think that a decision to grant a security clearance to an alien or former alien should be taken on the basis of positive information comparable in quality and adequacy to that which would be obtained in Canada. Unfortunately, there will be many cases in which it will be impossible to obtain adequate data concerning an individual who has recently arrived from abroad, and we think that, in such cases, no clearance should be considered until the individual has been resident in Canada for a meaningful period and has undergone a full field investigation. Former citizens or residents of communist countries are a special category; in these cases clearances should only be granted where the obvious advantages of doing so outweigh the special risks involved.

105. Finally, we feel that positive arrangements must be made to ensure as far as possible that departmental judgments are consistent and balanced. Two procedures—one general and one specific—should be adopted to this end. In the first place, all adverse decisions and a sampling of non-adverse decisions should be reviewed by the Security Secretariat in consultation with the Security Service. Continuing inconsistencies or anomalies in departmental judgments and action should soon become apparent, and the Security Secretariat can use the channels open to it to rectify the situation. Secondly, we suggest that when a department decides to grant access to classified information in spite of the Security Service's advice or recommendation, the Security Service must be informed of the disposition of the case, so that it can take such action as it considers appropriate to review the department's security posture, or to bring the department's decision to the attention of the Security Secretariat. It seems to us that procedures of this kind will combine the requirement for departmental responsibility for judgment with an assurance that a department's judgment will be responsible.

Review Procedures

106. Decisions to withhold or (especially) to withdraw clearances must often lead to administrative decisions that may affect the careers or the livelihood of individuals. In some cases the individuals concerned find it in their own interests to resign or agree to a transfer. There remains however a residue of cases in which the demands of natural justice may well require that decisions affecting individuals should be subject to some form of appeal or review at the instance of the individual concerned. A great deal of attention has been devoted in many countries to the problem of devising a form of review which will meet the proper requirements of national security, and the fact that there is no simple solution to the problem is demonstrated by the wide variety of approaches that have resulted in different countries—approaches which vary from an absence of any appeal system to an ostensible complete depedence on formal judicial proceedings.

107. Our inquiries suggest that both extreme positions are untenable. Some form of review system is clearly desirable in itself, as well as to meet reasonable public and parliamentary expectation. On the other hand, we are certain that fully judicial procedures are ill-suited to the review of decisions based on security grounds. There are a number of reasons for this. One reason has in our view been overemphasized in Canada, although it still has great importance in certain circumstances; this is the need to protect information and sources from disclosure in any form of hearing. A second reason has not been emphasized sufficiently; this is the fact that decisions in this area ultimately relate to the defence of the state, for which the government and only the government is responsible. Such decisions should not be surrendered to any group outside the executive, although there is no reason why the executive cannot seek advice in its decision-making. A third reason relates to responsibility. Ministers and deputy ministers are responsible for the security of their departments; they cannot reasonably be required to be bound by an outside decision (other of course than that of the Prime Minister) on questions of individual access to the classified material for which they are responsible. A fourth reason is pragmatic; if all judgments in the area of security become subject to independent appeal and decision, the executive may tend to take such steps as are possible to ensure that cases which merit this form of review do not arise; in other words, the harder it becomes to deal with security cases without recourse to legal and public review, the greater will be the pressures for very rigorous—even unfairly rigorous—judgments by departments before employment, and for resort to administrative (rather than security) measures against employees who become the subject of adverse security reports.

108. There are three areas in which review may be required—employment, immigration and citizenship. Until recently the situation was that decisions concerning dismissals of public servants (but not industrial workers) on security grounds might be reviewed as a last resort by three members of the Security Panel who act in a collective advisory capacity. The situation has however been changed by recent amendments to Sections 7(7) and 7(8) of the Financial Administration Act (S.C. 1966-67, c. 74) which read as follows:

> "(7) Nothing in this or any other Act shall be construed to limit, or affect the right or power of the Governor in Council, in the interest of the safety or security of Canada or any state allied or associated with Canada, to suspend any person employed in the public service or, after an inquiry conducted in accordance with regulations of the Governor in Council by a person appointed by the Governor in Council at which the person concerned has been given an opportunity of being heard, to dismiss any such person.
>
> "(8) For the purposes of subsection (7), any order made by the Governor in Council is conclusive proof of the matters stated therein in relation to the suspension or dismissal of any person in the interest of the safety or security of Canada or any state allied or associated with Canada."

Later in this chapter we suggest a means whereby this requirement for a hearing may be met. Immigration decisions in which security is a factor may be appealed to the Immigration Appeal Board, which may take into account compassionate and humanitarian considerations, unless the two ministers concerned sign certificates denying discretion on other than strictly legal points to the Board. Citizenship decisions involving security cases are decided by the responsible minister and no appeal procedures exist at present. These differing systems seem to us to be inconsistent, wasteful of expertise and in the long term probably marginally dangerous to the security of the state as well as to the rights of individuals. We have in fact encountered no very widespread concern about these present arrangements but we feel that a new and more formalized approach to the problem would serve to improve the public image of security measures and still what criticism does now exist about their fairness.

109. We have reviewed the arguments and discussions that have taken place over the years—particularly in 1957 and 1963—concerning the propriety of establishing some form of security review panel to which public servants would have access. In 1963, when the issue was considered in great detail, the system was instituted by which three members of the Security Panel would review any proposed recommendation to a minister for dismissal on security grounds. At that time the main arguments advanced against the establishment of a panel outside the public service were: first, that the government would be subject to pressures for the extension of the proposal to include fully judicial safeguards for the employee, and that these would inevitably compromise vital sources of security information; secondly, that the government would be subject to pressure for the extension of the plan to members of the armed forces, who have their own grievance procedures, and to employees of private firms, thus creating difficulties in the field of labour-management relations; thirdly, that the proposed procedure would undermine established managerial responsibilities and practices throughout the public service; and fourthly, that departments would tend to seek other methods of dealing with security cases in order to avoid mandatory review of decisions by a body outside the public service.

110. We do not find these arguments completely persuasive. Briefly, we feel that pressures for a fully judicial review system can be resisted, that extension of a sensible system to the armed forces and to private industry is not necessarily undesirable, that established managerial responsibilities and practices in the public service in the area of security are not so effective and satisfactory as to be entirely unworthy of interference, and that the avoidance of decisions leading to mandatory review may not always be undesirable from the point of view of national security. Further, although we are convinced that great care is exercised in the handling of individual cases, we are unimpressed by the operation of the system for final review that was adopted in 1963. We do not think it impossible to devise a different system which will provide for meaningful review of the decisions of depart-

ments, preserve the requirement for governmental responsibility and decision, give adequate protection to sensitive information and sources yet provide a reasonably effective safeguard against arbitrary, hasty or ill-considered judgments, and perhaps also avoid the necessity for ad hoc inquiries into individual cases.

111. In our attempt to devise such a system we have kept in mind three principles. First, it seems to us vital that individuals (except applicants for employment and independent applicants for immigration) who are the subjects of decisions on security grounds should be given as many details as possible of the factors which have entered into the decisions. Quite clearly there will be some cases in which little information can be made available to the individual, but normally, in the general run of cases relating to membership of associations, residence of relations and character defects, it should be relatively simple to indicate the relevant factors without disclosing sensitive sources. At the very least it is certain that in areas such as employment, immigration and citizenship, in which decisions may be made either on security or on non-security grounds, it is essential to inform the subject of the category into which his case falls, so that he is able to take the appropriate steps if he wishes his case to be reviewed.

112. Secondly, as we have already implied, we maintain that the decisions of a board concerned with the review of security matters can only be advisory. Security is a function in which the safety of the state is involved, and in such an area the government must exercise its right to govern; no independent or extra-governmental body can assume this role. In practical terms the board must review the final decisions of departments and advise the Prime Minister and the minister concerned of the results of this review.

113. Thirdly, we consider that security is an area in which expertise and understanding are important. We consider it wasteful that expertise in this area should be acquired and then used only in a few individual cases or specialized areas; all security decisions have much in common, and the same board should review contentious decisions in all appropriate areas.

114. In fact, we suggest that a new Board should be established to deal with a variety of appeals against security decisions. The general responsibility of this Board would be to review decisions made in the area of security in order to ensure that the rights of individuals had not been unnecessarily abrogated or restricted in the interests of the security of the state and its allies, and that no unnecessary distress had been caused to individuals. The Board would deal with the following types of cases:

(a) Protests by public servants (including members of the armed forces) who wish to appeal against a departmental decision to dismiss or transfer them on security grounds. In cases of dismissal, the Board would provide the form of hearing required by Section 7(7) of the 1967 amendments to the Financial Administration Act (S.C. 1966-67, c. 74).

(b) Protests by public servants against denial of promotion or against an apparent inhibition of career prospects on security grounds. Cases of this kind will normally only come to light after appeal through normal channels to a Promotion Appeal Board if this Board feels it necessary to advise the applicant of the true reason for failure to take some such administrative action as posting or transfer.

(c) Protests by industrial workers against dismissal or transfer or against denial of promotion or apparent inhibition of career prospects on security grounds.

(d) Protests by such persons as consultants or university faculty members where withdrawal of clearance affects professional careers.

(e) Protests by sponsors or nominators against refusal on security grounds to admit to Canada potential immigrants they have sponsored or nominated, and protests by sponsors or nominators against refusal to grant landed immigrant status to a person already in Canada whom they could have sponsored or nominated if he were abroad.

(f) Protests by applicants for citizenship who have been refused on security grounds.

115. It will be noted that there are three categories of persons who we think should have no access to the Review Board. Nor should these classes of persons be given any indication that the reasons for adverse decisions are based on security grounds. These categories are as follows:

(a) Failed candidates for employment as public servants. An applicant for employment knowingly places himself in a competitive situation, and presumably appreciates that any decision concerning him will be made on the basis of a complex of factors; there is absolutely no requirement for the employer—in this case, the government—to enter into controversy with an applicant by informing him of the reasons for his failure. Similar considerations apply to failed applicants for employment in industry, and to consultants and faculty members who are denied clearance as opposed to having an existing clearance withdrawn.

(b) Independent applicants for immigration resident abroad. Although the Canadian Government is committed by common justice and humanity to give fair consideration to all cases, it would be inappropriate for it to be placed in the position of having to enter into a controversy concerning security with a citizen of another country without sponsors.

(c) Persons without sponsors or nominators who enter Canada ostensibly as visitors and then request a change of status to that of landed immigrant. We see no reason why such persons should be treated differently from independent applicants for immigration resident abroad; as such they should have no access to the Review Board.

116. In addition, it should be noted that persons who have already passed through the immigration screening process (on their own behalf or through sponsors or nominators) and have been formally admitted to Canada as landed immigrants should have no need to appeal to this Board. We think that deportation of such persons should be regarded as a most serious punitive act, and that decisions to deport, even if taken on security grounds, should be subject to formal judicial due process and appeal rather than to a review by the kind of board we envisage. If the situation is such that the government is unwilling to disclose acceptable and satisfactory evidence, we feel that deportation should not be ordered. As long as immigration controls are reasonably rigorous and effective, such situations should not often arise.

117. The Security Review Board we envisage should consist of a Chairman and (say) two other members, all nominated by the Governor in Council, and should meet as the need arises. The Board should be independent of any government department or agency although its secretarial support would be provided by the Security Secretariat. Its members should not be active government officials, although they would of course be subject to government security screening procedures. The Board's procedures should be on the following lines:

(a) An employee, sponsor or nominator of an immigrant, or applicant for citizenship about whom an adverse decision has been made on security grounds and who decides to apply for an inquiry is provided with a document indicating to the extent possible without compromising sensitive information or sources the reasons for the adverse decision.

(b) The Board interviews separately and privately representatives of the department concerned, representatives of the security authorities, the person concerned (who may be accompanied by any friend, lawyer or trade union official he wishes to nominate) and any other individuals whom the person wishes to be heard. The Board may interview these persons as many times as it considers necessary to gain a full understanding of the case. The Board is not bound to make its decision and render its advice solely on the basis of the evidence brought before it, and may order such further inquiries as it considers appropriate. As all those who appear before the Board are interviewed separately, there is no direct confrontation or cross-examination, but the Board may of course ask questions based as previous testimony.

(c) The advice of the Board on a given case, the reasons for this advice and any recommendations or comments which the Board considers appropriate are communicated by the Board to the Governor in Council and the minister concerned. A brief record of the Board's decision is also communicated to the individual concerned. When the

advice of the Board has been received, any further action on the case is considered by the Prime Minister in the light of this advice.

118. The suggestion has been made that recent legislation affecting the public service, especially the Public Service Employment Act, the Public Services Staff Relations Act and Amendments to the Financial Administration Act (S.C. 1966-67, c. 71, c. 72 and c. 74), together with the grievance procedures which stem from them, may make it difficult in future to deal with individual security cases in the manner we outline above. We have considered the existing legislation, however, and believe that the government's position is secured by Section 112 of the Public Service Staff Relations Act, which reads as follows:

> "(1) Nothing in this or any other Act shall be construed to require the employer to do or refrain from doing anything contrary to any instruction, direction or regulation given or made by or on behalf of the Government of Canada in the interest of the safety or security of Canada or any state allied or associated with Canada.
>
> "(2) For the purposes of subsection (1), any order made by the Governor in Council is conclusive proof of the matters stated therein in relation to the giving or making of any instruction, direction or regulation by or on behalf of the Government of Canada in the interest of the safety or security of Canada or any state allied or associated with Canada."

V. IMMIGRATION AND SECURITY

Present Procedures

General Considerations

119. The principle is firmly established that Canada's requirement for immigrants must be balanced against and reconciled with the need to protect the safety and health of the state and its people by excluding certain classes of persons who appear to be undesirable. This undesirability may take a variety of forms; individuals may be undesirable because they lack skills which will enable them to support themselves and their families; they may be undesirable because they are physically or mentally unhealthy or have criminal records involving moral turpitude. The need for some form of screening to exclude such persons is generally understood and accepted.

120. Unfortunately in present circumstances individuals may also be undesirable on security grounds: their past records of activities or associations may suggest that they are likely to behave in ways which may be detrimental to the security of Canada or her allies. Accordingly, Canada, in common with almost all other states, attempts to exclude persons who represent a potential danger in the fields of subversion or espionage. It is however admittedly a difficult task to assess how great a potential danger any particular individual represents, and, because of the almost complete absence of satisfactory data concerning the behaviour of different classes of immigrants after their arrival in Canada, it is hard to assess after the event the effectiveness of the security screening programme.

121. It should be noted, first, that only a very small proportion of potential immigrants who are excluded from Canada are refused on security grounds; most refusals are on grounds of health or lack of skills. In numerical terms the security screening programme has a negligible effect on the total number of immigrants who enter Canada. Secondly, we have already mentioned in general terms Canadian responsibilities to her allies for security measures. In the area of immigration policy, because of the open border with the United States, this responsibility is of special importance.

Classes of Immigrants

122. Canada's immigration regulations, which had become extremely complex and inconsistent, underwent a major revision in October 1967. They

now provide for the admission of four classes of immigrants, and the distinction between these classes must be appreciated if security screening procedures are to be understood:

(a) *Sponsored dependants:* every person residing in Canada who is a Canadian citizen or a person lawfully admitted to Canada for permanent residence (i.e., a landed immigrant) is entitled to sponsor for admission to Canada for permanent residence any of the following so-called "dependants": husband, wife, fiancé(e) and accompanying unmarried children under 21 of fiancé(e); unmarried children under 21; parents or grandparents over 60 or under 60 if incapable of gainful employment and accompanying immediate family of parents or grandparents; orphaned brothers, sisters, nephews, nieces, or grandchildren under 18; children who were adopted under 18 and who are unmarried and under 21; certain children under 13 whom the sponsor intends to adopt; and (under certain conditions) one other of the sponsor's next closest relatives.

(b) *Nominated relatives:* every person residing in Canada as a Canadian citizen or landed immigrant may nominate for admission to Canada for permanent residence any of his or her children over 21, married children under 21, brothers and sisters, parents and grandparents under 60 years of age, nieces, nephews, uncles, aunts and grandchildren.

(c) *Independent applicants:* those without sponsors or nominators.

(d) *Applicants already present in Canada:* persons who have entered the country as non-immigrants and wish to change their status.

123. Sponsored dependants are admissible without regard to their skills, personal qualifications or the financial circumstances of the sponsor. They are ordinarily admitted without question unless barred for serious reasons of health, criminal activity, or security. Nominated relatives and independent applicants must, in order to be admissible, pass a series of selection tests relating to their occupational skill and educational level and a number of other factors. A nominated relative is presumably coming to Canada to earn a living, and, unlike the sponsored dependant, must satisfy some criteria as to his ability to do so. In practice, these prospective immigrants are assessed points, according to their education, personal qualities, and other factors. An immigrant who ranks high in each of these categories is likely to be accepted subject to medical and security screening. Other factors taken into account, particularly in the case of independent applicants, include employment arrangements, knowledge of English or French, and area of destination. Applicants already present in Canada (i.e., non-immigrants in Canada who apply for permanent admission and landed immigrant status) are admissible on essentially the same bases as if they had been examined abroad, except that those who do not qualify as sponsored dependants must meet a somewhat higher selection standard than if they had applied abroad.

Security Screening of Immigrants

124. The security screening programme for prospective immigrants was originally established in 1947 with the following objective: "To deny admission to any persons who, from their known history and background, would be unlikely to adapt themselves to the Canadian way of life and to our democratic form of government". The authority for the present programme derives from the Immigration Act (R.S.C. 1952, c. 325), Section 5 of which states that no person shall be admitted to Canada as an immigrant if he is a member of any of certain classes of persons. These classes include:

"(*d*) persons who have been convicted of or admit having committed any crime involving moral turpitude, except persons whose admission to Canada is authorized by the Governor in Council upon evidence satisfactory to him that

(i) at least five years, in the case of a person who was convicted of such crime when he was twenty-one or more years of age, or at least two years, in the case of a person who was convicted of such crime when he was under twenty-one years of age, have elapsed since the termination of his period of imprisonment or completion of sentence and, in either case, he has successfully rehabilitated himself, or

(ii) in the case of a person who admits to having committed such crime of which he was not convicted, at least five years, in the case of a person who committed such crime when he was twenty-one or more years of age, or at least two years, in the case of a person who committed such crime when he was under twenty-one years of age, have elapsed since the date of commission of the crime and, in either case, he has successfully rehabilitated himself;

(*e*) prostitutes, homosexuals or persons living on the avails of prostitution or homosexualism, pimps, or persons coming to Canada for these or any other immoral purposes.

(*f*) persons who attempt to bring into Canada or procure prostitutes or other persons for the purpose of prostitution, homosexual or other immoral purposes; . . .

(*l*) persons who are or have been, at any time before or after the commencement of this Act, members of or associated with any organization, group or body of any kind concerning which there are reasonable grounds for believing that it promotes or advocates or at the time of such membership or association promoted or advocated subversion by force or other means of democratic government, institutions or processes, as they are understood in Canada, except persons who satisfy the Minister that they have ceased to be members of or associated with such organizations, groups or bodies and whose admission would not be detrimental to the security of Canada;

(*m*) persons who have engaged in or advocated or concerning whom there are reasonable grounds for believing they are likely to engage in or advocate subversion by force or other means of democratic government, institutions or processes, as they are understood in Canada;

(*n*) persons concerning whom there are reasonable grounds for believing they are likely to engage in espionage, sabotage or any other subversive activity directed against Canada or detrimental to the security of Canada; . . .

(*q*) persons who have been found guilty of espionage with respect to Her Majesty or any of Her Majesty's allies;

(*r*) persons who have been found guilty of high treason or treason against or of conspiring against Her Majesty or of assisting Her Majesty's enemies in time of war, or of any similar offence against any of Her Majesty's allies; . . . "

125. Certain arrangements have been developed over the years in order to decide whether immigrants fall within these prohibited classes. These arrangements necessarily vary from country to country, but information about a prospective immigrant may be acquired from the application form itself, by personal interview, or in some cases through liaison with authorities in the immigrant's country of origin. As can be imagined the quality of the information obtained from these authorities varies widely; there are some places where the situation is such that, through no fault of their own, the authorities are often unable to furnish useful information; in some other countries (including those within the communist bloc) no liaison with the authorities is practicable, and the main reliance is placed upon interviews with the potential immigrant and upon the security screening of the immigrant's sponsor in Canada. The information bearing on the suitability of individuals is considered by Canadian officials located in the countries concerned in relation to a set of criteria (which also vary from country to country and according to whether the immigrant is sponsored, nominated or independent). If in the judgment of these officials the circumstances are such that the applicant should be refused on security grounds, in certain instances the case is referred to Ottawa for decision.

126. A further element of variation is introduced by the fact that sponsored dependants are normally not themselves the subjects of security examination. Instead, the sponsor is checked against the subversive records in Ottawa and only if an adverse trace is found is a security check of the dependant instituted in his own country. In the case of nominated relatives, both the nominator and the relative are ordinarily subject to some form of security screening. Independent applicants are normally subject to full screening.

127. It should be emphasized that, according to the present procedures, the officials in the field do not make the final decision to reject a sponsored dependant on security grounds; this decision rests ultimately with the Department of Manpower and Immigration. Cases are studied by departmental officials and a decision is normally made by the Director of the Home Branch and the Deputy Minister. In addition, if any particular case appears to be somewhat sensitive or contentious, it may, at the discretion of the Department, be referred to an ad hoc Interdepartmental Committee of officials. The function of this body, which is entiely advisory, is to make a recommendation to the Deputy Minister of Manpower and Immigration as to whether the prospective immigrant should be admitted or refused.

The advice of the Committee may be rejected by the Deputy Minister or the Minister of Manpower and Immigration.

Deportation and Appeal Procedures

128. Until 1967, facilities for appeal were available only to persons who had been ordered deported, and not to those who had been refused admission as immigrants. The then existing Immigration Appeal Board dealt only with deportation orders, and was advisory to the Minister of Manpower and Immigration. This situation was changed by the Immigration Appeal Board Act of 1967 (R.S.C. 1966-67, c. 90). The new Board established under this Act is concerned with both immigration and deportation, may hear and consider humanitarian and compassionate as well as legal factors, and commands some of the discretionary power previously vested in the Minister of Manpower and Immigration. An appeal may be made on any ground that involves law or fact or mixed law and fact by a person against whom an order of deportation has been issued, or by the sponsor (if a Canadian citizen) of a dependant against refusal to admit the dependant. It should be noted that neither nominators of relatives, nor independent applicants outside Canada, have a right of appeal, but an applicant already in the country may appeal against a deportation order whether or not he is sponsored or nominated. This right of appeal, incidentally, applies even to stowaways or deserting seamen.

129. In cases of deportation the Immigration Appeal Board may, in addition to ruling on the legal correctness of the deportation order, consider whether the order should be stayed or quashed on compassionate or humanitarian grounds. At the stage when the Board has confirmed the legal correctness of the order, a certificate signed jointly by the Minister of Manpower and Immigration and the Solicitor General may be introduced stating that in their opinion on the basis of confidential security reports it would be contrary to the national interest for the Board to stay or quash the order on compassionate or humanitarian grounds. On receiving such a certificate the Board has no alternative but to allow the order to proceed. A similar certificate may be issued to prevent the Board from exercising its discretion on compassionate or humanitarian grounds in cases where sponsored dependants are refused visas.

Comments and Alternatives

Data and Decisions

130. We have several times referred to the need for scrupulously formulated and consistently enforced security policies and procedures, and we feel that this requirement applies with special force in areas such as immigration where there is an immediate impact on the lives of individuals but no im-

mediate question of access to classified information. We realize that some anomalies are inevitable, but we believe that the basic principles should be clear and unequivocal.

131. We feel that data must be acquired as far as possible about the criminal and security records of all prospective immigrants to Canada irrespective of relationship, sponsorship, or country of origin. We can see no reason why, in the case of sponsored dependants, efforts are made to acquire information about the immigrant himself only if a check of the sponsor against the subversive records has produced some adverse trace. We cannot understand why the state should deny itself the use of available means of inquiry concerning an immigrant merely because he is sponsored. In our view, security and criminal checking of the sponsor should be a substitute for the screening of the potential immigrant only when no information is available on the immigrant himself.

132. We fully appreciate that on humanitarian grounds it is necessary to apply rejection criteria with leniency in the cases of close relatives, and especially where husbands or wives, aged persons or children are concerned, but we would point out that sponsored dependants are a large class and include many persons whose connection with the sponsor may be relatively remote. In general we feel that unless humanitarian considerations are judged to be overriding, significantly adverse security reports on an adult immigrant should lead to rejection, as should significantly adverse reports on a sponsor or nominator in cases where the immigrant himself cannot be checked.

133. We have noted that the final decision to admit or reject a prospective immigrant rests with the Department of Manpower and Immigration, even where an objection has been raised on security grounds. We recognize the ultimate responsibility of the Department for the acceptance or rejection of immigrants, but we feel that the Department's responsibility in the area of security is analogous to that exercised by all departments for their own security. In particular, the significance to be attached to an adverse security report would be best evaluated in conjunction with specialists in security.

134. We believe that security procedures in the area of immigration could be much improved if there were an upgrading of the quality, maturity, and training of the concerned officials in the field. A working knowledge of the local language, for example, would seem to be imperative. Given such an upgrading, however, we feel that the decisions of the officials in the field, who have immediate knowledge of the applicant, should carry great weight.

135. If the officials in the field are uncertain about the admission or rejection of any applicant on security grounds, the case should be referred to Ottawa for consideration by the Department of Manpower and Immigration, the Security Service, and, at the option of either one, the Security

Secretariat. In addition, every case of rejection of a sponsored dependant or nominated relative should be reviewed jointly by these agencies in Ottawa. Humanitarian considerations relating to dependants or relatives will thus be introduced into the decision process in Ottawa, as will representations from interested persons in Canada about particular applications. Only if no agreement can be reached by the Department and the security authorities on any of these cases should the Minister's final responsibility for decision-making be exercised, and even then he should be in receipt of briefs on a particular case both from his Department and from the security authorities. In addition, the Security Secretariat should assume responsibility for a continuing audit and review of a sample of field decisions in order to detect any significant biases in the decisions made at particular locations.

Rejection Criteria

136. Even with these revised arrangements the officials in the field will continue to need guidelines on which to base their judgments although, given officials of adequate calibre and experience, these guidelines need not be so binding in detail as the rejection criteria have been in the past. We regard the present criteria for sponsored dependants and nominated relatives as unnecessarily complex and somewhat illogical, and the criteria for independent applicants as obscure and outdated. We think that one set of criteria should apply to all countries and all cases.

137. We have tried our hand at drafting a set of general and universally applicable guidelines, or factors that should be considered by the officials in the field in making initial judgments of potential immigrants from the point of view of security. In considering the following guidelines three points should be noted. First, these guidelines relate only to security and are not intended to affect judgments of acceptability in other civil or criminal contexts as laid down in the Immigration Act. Secondly, the guidelines should be interpreted with mature judgment by the officials on the spot according to their understanding of local conditions. Thirdly, elements of leniency should be introduced into the decision process in Ottawa, and should not be the concern of the officials using these guidelines abroad. In general, we think that persons in the following classes should be rejected:

(*a*) Persons who are believed on reasonable grounds to have held at any time an official position in a communist, neo-Nazi, neo-Fascist or other subversive or revolutionary organization, or to have held a government, party, public or other senior position or appointment known to be given only to reliable members of such an organization.

(*b*) Persons who are believed on reasonable grounds to have held membership within the past ten years in a communist, neo-Nazi, neo-Fascist or other subversive or revolutionary organization, unless the applicant can demonstrate that membership was for trivial, practical, non-ideological or other acceptable reasons.

(*c*) Persons who are suspected on reasonable grounds to be or to have been at any time agents on behalf of a communist, neo-Nazi, neo-Fascist

or other subversive or revolutionary organization, or to have taken part in sabotage or other clandestine activities or agitation on behalf of such an organization.

(*d*) Persons who for unexplained reasons engage in significant misrepresentation or untruthfulness in completing documents for immigration purposes or during interviews.

We suggest also that similar guidelines should be used in Ottawa in making judgments both about sponsors or nominators on those occasions when no direct check of the applicant has been possible, and about applicants who are already in Canada.

138. Certain points must be added about applicants from the communist bloc and Hong Kong. As far as the communist bloc is concerned, we do not accept the argument that anyone who leaves a communist country is necessarily a non-communist or an anti-communist. However, we are sure that the acceptance of dependants and relatives from communist countries can often be justified on humanitarian grounds, although we have some reservations about the remoteness of the dependants and relatives who may now be sponsored or nominated. In these cases we feel that the sponsor or nominator should be screened against criminal and subversive records, and a significant adverse report should be balanced against the humanitarian considerations. We feel that independent applicants from communist countries must not normally be accepted unless they have first established sufficient residence in a country where facilities exist to carry out a meaningful check on their character and background. In certain other circumstances, even this requirement may, after careful consideration, be waived (say, in the case of a communist scientist of international repute), but we feel that the principle must remain. To ignore or regularly to contravene it would in our opinion cast doubt on the value of the entire security screening programme. It would encourage communist governments to make use of an obvious opportunity to infiltrate persons into North America, and, when combined with the current case of entry into the Canadian public service, would eventually invalidate (or at least call into question) the basic governmental security programme.

139. The acceptance of Chinese immigrants from Hong Kong presents another series of special problems, which arise largely from the inadequacy of Canadian security screening procedures in Hong Kong. The Canadian authorities depend in many cases entirely on the results of an interview, conducted through an interpreter by an officer who does not speak Chinese and is not particularly expert in Chinese affairs. We think that these arrangements must be rapidly and extensively revised. Some years residence in Hong Kong itself or in an area where some meaningful check is possible must be made mandatory. Fingerprints are a clear requirement. There is no doubt that fingerprinting is the only sure method of establishing identity and facilitating criminal traces, particularly in Hong Kong; available statistics

make quite apparent the additional positive traces that are revealed by fingerprint checks. Furthermore in cases of doubt the fingerprints of the individual to whom the visa is issued should be compared at the port of entry with the fingerprints of the person who actually arrives.

140. We consider in fact that the requirement for fingerprinting should be extended to all prospective immigrants to Canada, irrespective of their country of origin or the immigration class into which they fall. In many cases meaningful checks of criminal records cannot be carried out without fingerprints, and in addition they may well be of importance in establishing identity. In this connection, we note that most other western countries fingerprint prospective immigrants.

Applicants in Canada

141. The granting of landed status to unscreened non-immigrants who are for one reason or another already present in Canada has historically constituted a significant gap in Canadian security defences. The extent of this problem is shown by the fact that on three occasions in the past ten years (in 1958, 1960 and 1966) the Department of Manpower and Immigration found it necessary to make arrangements to grant so-called amnesties to persons who were in Canada illegally. We believe that steps must be taken to ensure that persons who apply for landed immigrant status after arrival in this country are not entitled to any form of appeal or review to which they would not have had access had they applied through normal channels. In other words, independent applicants who cannot satisfy the security (and other) criteria they would have been required to satisfy in their country of origin should be deported without appeal. Sponsors of dependants should have the same access to the Security Review Board they would have had if the dependant had been abroad. Furthermore, we think that this access should be extended to nominators of relatives who are refused visas or landed status. If the Review Board's recommendations is adverse and is accepted by the government, no further appeal should be possible.

Deportation and Appeal

142. Our views on one important aspect of deportation and appeal procedures have already been outlined. We feel that the deportation of an immigrant who has been formally landed in Canada is a most serious matter, and that it is right that any such order should be subject to formal judicial due process and appeal before a body such as the Immigration Appeal Board. If the government is unwilling to produce acceptable and satisfactory evidence, we feel that deportation should not be ordered. Such situations should not often arise, if reasonably effective immigration screening procedures exist.

143. However, it seems to us inequitable that an individual who has not been granted landed immigrant status should have access to a fully judicial system of appeal against deportation on security grounds, when an applicant abroad has no such right. Individuals can attempt to evade our immigration regulations by entering the country as visitors and making use of the process of appeal now available to them. We think however that the sponsors or nominators of prospective immigrants (but not the prospective immigrants themselves) should be able to request the review of decisions taken on security grounds to refuse immigrant visas or (in the case of persons already here) landed status to those whom they have sponsored or nominated. This review should be undertaken not by the Immigration Appeal Board, but by the Security Review Board that we suggest in Chapter IV. We believe that access to a review board of this kind will in the long term be considerably more satisfactory than present procedures.

Aliens Registration

144. We have given some consideration to the usefulness in Canadian circumstances of an aliens registration procedure. In the most usual form of this procedure an alien entering a country is required to complete a document at time of entry, and to file with the government at regular intervals (or at each change of address) details of his location, status and occupation. This process is continued until the alien either becomes a citizen or leaves the country. Experience with such systems has shown that only a relatively small percentage of those who should make returns do so, and that it is difficult to enforce sanctions against delinquents. The most rewarding aspect of the process is that it may help to provide some data concerning the activities of a sampling of immigrants, and thus provide a basis for judgments about the usefulness and effectiveness of screening procedures. There is serious doubt however whether an aliens registration system is the best way of achieving this limited objective, because those persons who do not respond most probably include those who have engaged in dubious activities. It would appear that a continuing programme of follow-up studies of samples of the immigrant population would have considerably more validity.

145. We understand that a system is in force in Canada whereby visitors entering the country complete a form, which is retained on record until their departure; this provides some check that individuals do not overstay their visas. Beyond this, however, we think it impracticable to go.

VI. CITIZENSHIP, PASSPORTS AND VISAS

Present Citizenship Procedures

146. The grant of Canadian citizenship is a prerogative of the Crown, exercised in practice by the minister responsible for the administration of the Canadian Citizenship Act (R.S.C. 1952, c. 33), at present the Secretary of State. Citizenship may be awarded to individuals who comply with certain administrative and residential qualifications, but may be withheld by the minister in the public interest.

147. The following procedures for granting citizenship have developed over the years. Application for citizenship may be made after a person has been resident in Canada for at least five of the eight years and twelve of the eighteen months immediately preceding his application. Non-British subjects apply in person either to one of the 13 departmental or the more than 250 local courts. British subjects may apply by mail to the Registrar of Canadian Citizenship or to one of the departmental courts. The applicant's name is checked against the subversive records of the RCMP, and the Citizenship court may conduct a check of local criminal records. Non-British applicants are then subject to an oral interview by a citizenship court and, if no significant adverse information on the individual has come to light and he possesses the proper residence, language and administrative requirements, the applicant is advised that the court is satisfied with his qualifications and is making a favourable recommendation to the department. If he lacks a specific qualification—knowledge of English or French, for example—the applicant is informed of this fact.

148. The recommendation of the court and the RCMP security report are received in the Department and, in the absence of adverse information, the Registrar of Citizenship authorizes the issuance of a certificate to the applicant at a citizenship ceremony. If adverse information is received from the RCMP, the case is examined by an Interdepartmental Committee of officials. The significance of the security information is considered, together with such factors as age, marital status, occupation, place and length of residence in Canada, and generally the circumstances and conditions of the applicant concerned. After a review of all the relevant data, the Committee may recommend that the application be approved, rejected, or deferred.

149. When the Committee's recommendation has been received by the Department of the Secretary of State, the Minister exercises his discretion. In practice the Registrar of Canadian Citizenship authorizes conferral where the recommendation has been in favour of the applicant, and the Secretary of State or the Under Secretary of State acting on his behalf makes the decision where the recommendation has been for deferral or rejection. The Minister himself will make the final decision on an application, where sensitive or contentious political issues may be involved. If the Department accepts a recommendation from the Committee that citizenship should not be granted, the applicant is simply advised by the Department that he has been rejected, but is given no specific reasons to explain his unacceptability. It is often quite obvious to the applicant, however, in view of the fact that a court has earlier indicated that it has no objections to his application, that security considerations have been the cause of his rejection.

150. In the earlier years of its operation, the Committee tended to base its recommendations on rather rigid and arbitrary criteria, and to recommend the rejection of applicants suspected of being sympathetic to subversive causes and organizations. Such an attitude has more recently come to be regarded as unrealistic and a more lenient approach has been adopted. Furthermore, the Committe makes its judgments in the knowledge that its recommendation does not result in a permanent refusal; any rejected applicant can make an indefinite number of further applications at intervals of at least two years.

151. An applicant for citizenship has at present no right to appeal a rejection on security grounds. Although a Citizenship Appeal Court has recently been established to hear appeals resulting from a negative decision by a citizenship court, this body has no relevance to security cases as an appeal is possible only in connection with a rejection by a local court, which is not authorized to consider questions of security.

Citizenship and Security

152. Our assessment of the efficiency and the value of our system of security screening of applicants for citizenship is naturally based on our view of the relative threats that may be posed to the security of Canada by citizens and non-citizens. There are undeniably certain material advantages to be gained by the possession of citizenship, including the right to vote, the right to run for public office, the right to a Canadian passport, the right to enter Canada, and the right to be employed in certain occupations and professions. It is true that many of these privileges are more or less available to the non-citizen who is determined to avail himself of them, although in some cases it may be necessary to make a false declaration (with a minimal risk of discovery) in order to do so. A resident non-citizen, for example, can remain in and return to Canada almost at will provided he complies with Canadian law; he can vote if he so desires (no

check of qualifications is normally made during the compilation of voters' lists); and he could probably even run for office after reasonably lengthy residence.

153. One of the more important advantages of Canadian citizenship is the legal acquisition of a Canadian passport, and the ability to travel as a Canadian. On the other hand, a resident without a Canadian passport is not necessarily restricted in his ability to travel. Most countries will extend or renew their passports indefinitely even if the bearer continues to be absent from his country of origin. There is also of course the possibility that a Canadian passport may be deliberately acquired in order to be made available for hostile use. It would appear to us however that foreign intelligence services can obtain an adequate supply of Canadian passports by other and simpler methods, and we would not regard it as very likely that individuals would seek Canadian citizenship merely to obtain passports for such purposes. Other less tangible considerations have been advanced in support of the maintenance of existing criteria for refusal of citizenship, including the arguments that to award citizenship to communists would be to make a mockery of the Oath of Allegiance, and that any relaxation of procedures would represent a communist propaganda victory.

154. We have considered all these factors from the admittedly limited point of view of security, and have concluded that on balance the danger posed to the security of Canada and her allies by a Canadian resident legally admitted as a landed immigrant is only marginally diminished by lack of citizenship, and only marginally increased by possession of citizenship. The individual in question is, and will remain, a resident, and we are not persuaded that his capabilities in the fields of espionage or subversion will be significantly enhanced by a citizenship certificate.

155. While we are impressed with present attempts to ensure objectivity and consistency in the application of the existing procedures, we feel that there still remains an element of unfairness in denying citizenship to an individual who has been a resident of Canada for five years when his actions have not been illegal and represent no immediate and direct threat to the security of Canada. We suggest that as a general rule citizenship should be withheld only for actual illegalities or criminal acts; in the area of security, these would include espionage, treason and similar offences. Membership in communist organizations or even of the Party itself, however, should not constitute causes for rejection.

156. We think however that there will remain some occasions on which it will be appropriate for the Minister to exercise his discretion to refuse citizenship on security grounds. We have in mind, for example, cases in which an applicant has taken certain actions clearly constituting a significant risk to security, but which it may not be in the public interest to prosecute or which may not in themselves be illegal. Such cases could include an

applicant who had had recent clandestine meetings with an intelligence agent of a foreign power, or who had shown other evidence of being an agent or informer of a foreign power. There may be nothing that could be proved to be illegal about such meetings, but it would probably be inappropriate to grant citizenship to an applicant in these circumstances, and the Minister's discretion must, we feel, continue to apply to such cases. We envisage that all those whose applications for citizenship are rejected on security grounds should have access to the Security Review Board described in Chapter IV.

Existing Passport Procedures

157. Passports in Canada are issued to Canadian citizens by the Passport Division of the Department of External Affairs. Theoretically, a passport cannot be demanded as of right, as its issue constitutes an exercise of the royal prerogative. In practice, however, the granting of passports has tended to be regarded by the government as a service, and only a very few categories of citizens—for example, those who owe money to the Department of External Affairs for repatriation—are denied passports. It has not been government policy to deny a passport to a Canadian citizen on security grounds unless travel abroad by the person concerned can be judged to represent a grave threat to our national security.

158. In order to acquire a Canadian passport a person living in Canada and claiming to be a Canadian citizen completes an application form in which he claims Canadian citizenship by birth, by naturalization or under some other provision of the Canadian Citizenship Act. If he is naturalized, proof of citizenship must be provided; if he claims to have been born in Canada, no documentation of any kind is required. The application must normally be endorsed by a guarantor, who must belong to one of a number of groups or professions. (There are currently some 300,000 eligible guarantors in Canada.) The guarantor signs a statement to the effect that he has known the applicant for at least two years, and believes the data contained in the application to be true, but this statement is neither witnessed nor made under oath. Neither is the requirement for a guarantor mandatory. If, for example, an applicant claims that he has not resided in a particular location long enough for any guarantor to know him well, he may go to a Commissioner for Oaths, Notary Public or Justice of the Peace and file a statutory declaration to this effect. The completed application may then be mailed to the Passport Office in Ottawa or presented over the counter. If it appears to be in order, the passport (valid for five years and renewable for a further five years) is mailed to the address provided in the application, or handed over the counter to the applicant or his messenger. About 300,000 Canadian passports are now issued each year.

159. Applicants for a Canadian passport living outside Canada apply to the Canadian diplomatic mission (Embassy, High Commissioner's Office, or Legation) or Canadian Consular or Trade Office in their country of

residence. All such applicants must provide documentation whether they claim citizenship by birth or by naturalization.

Passports and Security

160. We are fully aware that a passport is not intended to be a guarantee of its bearer's loyalty and reliability, and we are in full agreement with the policy that passports should not be denied to Canadian citizens on security grounds. We would not deny freedom to travel even to known subversives, nor would we place limitations on the geographical validity of their passports. We do believe however that urgent steps must be taken to ensure that the Canadian passport is a document of integrity, issued only to those persons who are entitled to receive it. This is not the case at present, in spite of certain minor innovations which have been introduced into the system of issuance recently. In Canada Canadian passports are in effect issued indiscriminately to any person who claims to have been born in Canada; no evidence of birth is required, nor are any effective checks made to ensure that the applicant (or his ostensible guarantor) exists. The guarantor system can be readily circumvented by means of the statutory declaration, and Canadian passports are delivered by mail even to a box number or accommodation address.

161. Canada has acquired a dubious international reputation with regard to her passports, and there is evidence that hostile intelligence services have concentrated on the acquisition of Canadian documentation because of this relative ease of procurement. In her own self-interest Canada should exercise considerably more stringent control in this area, and in addition there is the consideration that a Canadian passport acquired by hostile authorities will in many cases not be used in Canada. As a member of the western alliance, Canada has an obligation to implement an adequate system of passport control, and not to represent a vulnerable link.

162. We have compared our procedures with those which exist in certain NATO and Commonwealth countries. Canada is unique among these nations in that she does not require a certification of birth from anyone claiming to have been born in Canada. In most other countries, passports are issued by local authorities with the details of the application subject to verification from available records. Most countries require a personal appearance by the applicant (or his appropriately authorized representative) before the passport is issued.

163. It would seem to us important that all applicants for passports should be treated alike, and that two basic requirements should be levied upon all passport applicants—certification of birth or citizenship, and personal appearance before a local official. As far as the former is concerned, Canada should demand that all applicants for a passport who claim to have been born in Canada produce a birth certificate, or alternatively

acceptable proof of birth; naturalized Canadians must continue to be required to produce their citizenship certificates. We are aware of the fact that such a requirement woud be of only limited value in uncovering fraudulent applications, but it would impose some difficulty for the dishonest applicant. In those cases where a passport was urgently required and a birth certificate or suitable evidence was not immediately available, the Passport Office might have discretion to issue a passport for only a limited period (say, six months), on condition that the bearer promise to provide satisfactory evidence of birth on return to Canada, at which time the passport would be made valid for the normal term. In those few cases where evidence of birth was impossible to obtain, an affidavit and a serious guarantee by a known guarantor could be accepted after investigation.

164. The requirement that all applicants appear personally before a public official necessarily involves some decentralization of arrangements for the receipt of applications or the issuance of passports. The Glassco Commission on Government Organization recommended the decentralization of the Passport Office and suggested that the (then) Department of Citizenship and Immigration might be the logical agency to act for External Affairs in the issue and renewal of passports. Other suggestions have been made, including the use of the offices of clerks of courts (in the United States, for example, an applicant must appear personally either at one of the ten passport offices or before one of the 3,800 federal and state courts), or RCMP detachment offices (or the Provincial Police offices in those areas of Ontario and Quebec where no RCMP detachments exist). The Department of External Affairs does, in fact, envisage a limited expansion of its facilities in the immediate future, and intends to open passport offices in Vancouver, Toronto and Montreal; we support such a programme, but we are quite sure that more extensive arrangements must be made for personal appearance. While we accept the need for occasional exceptions under particularly compelling circumstances—if the applicant is very ill, for example—we are convinced that generally all applicants for passports must present themselves before an authorized local official where their existence, statements and documentation will be subject to verification.

165. We feel that the guarantor system should be retained even after a decentralized passport operation has been established. The guarantor represents a useful point of departure for future investigation of statements made on the application form, and the requirement may sometimes constitute a further, though minor, impediment to those who would seek to obtain a passport by illegal means. We would add, however, that in our opinion pressures to extend the ability to act as guarantor to additional groups of persons should be resisted.

166. Further, we are somewhat alarmed by the apparent ease with which ostensibly lost passports may be replaced. We think that it should be made clear to the public that the loss of a passport is a serious matter. When

individuals lose more than one passport or where there is reason to suspect that the "loss" may have been intentional, the issuance of a further passport should be delayed until the validity of the original has expired. In cases of emergency such persons would travel on emergency passports issued for specific journeys.

167. The usefulness of a computerized list of Canadian citizens has been pointed out to us. We would not recommand that such a list should be created merely for passport control purposes, but if a decision were made on other grounds to form such a system passport applications should clearly be referred to it.

Certificates of Identity

168. A certificate of identity is roughly the equivalent of a passport for a non-citizen and, in conjunction with appropriate visas, may be used as a legitimate travel document. About 1,500 are issued each year, and roughly the same number renewed.

169. Certificates of identity have several applications. For example, if a landed immigrant wishes to travel abroad while living in Canada, he will normally do so on the basis of his native passport, as most countries will extend or renew their passports indefinitely, even if the holder continues to be absent from the country of origin. If, however, his passport has expired and cannot be renewed, a certificate of identity may be granted. Generally, the security and other criteria that are applied to citizenship applications apply to the grant of these certificates. They may however be granted to persons who have been rejected for citizenship for such reasons as inadequate language proficiency. The certificates are valid for up to two years and require visas for entry to any foreign country, including the United States. Further, a certificate of identity may occasionally be granted as a one-way document to a non-citizen who is without a passport, wishes to move elsewhere and has been accepted by another country. Finally, if an individual (a refugee, for example) wishes to come to Canada but does not possess a passport issued by his native country, he may, after being cleared by our immigration authorities, be granted an "affidavit in lieu of passport"; this is a one-way document and must be surrendered upon entry to Canada.

170. We are satisfied that the procedures relating to certificates of identity are satisfactory and we do not think that any additional problems will be raised by our suggested relaxation of criteria for the rejection of applicants for citizenship. Certificates of identity are issued in small numbers and are granted only under specific and unusual circumstances for limited purposes.

Exchanges of Visits with Communist Countries

171. In principle, increasing contact between the communist countries and the west by means of visits in each direction by private or official delega-

tions and individuals is desirable for a variety of reasons. Nevertheless, certain problems posed by these exchanges must be of concern to western governments and security authorities. First, western visitors to communist countries are liable to be subjected to various forms of pressure, persuasion and intimidation with the object of exploiting them for intelligence purposes at the time of the visit or later. Communist societies are such that behaviour which would be accepted in a western society, or apparently simple acts (such as, for example, trivial attempts to trade on the so-called "black market"), can unexpectedly render largely innocent individuals vulnerable to pressures from the intelligence services of the countries concerned. This problem is compounded in the case of persons who originate from communist countries; some of these states refuse to accept loss of native citizenship, and western authorities may be quite unable to be of assistance to people in this situation. In these circumstances, western governments have a duty to provide warning, advice and counsel to intending travellers as a form of defence against these activities.

172. Secondly, in permitting visits to the west, the communist countries are often motivated by intelligence considerations and by the possibility of exploiting western industrial, scientific or technological achievements and information. Almost all visitors from communist countries are subject to some form of control by their governments, and it is routine communist practice for delegations to include officers charged with intelligence tasks in addition to their ostensible missions.

173. Present Canadian procedures in the general area of exchanges of visits are directed towards ensuring as far as possible that visas are not issued to intending visitors from communist countries until relevant factors have been weighed, and also that Canadian individuals and delegations are warned of the security and other dangers involved in visits to communist countries. These procedures date from 1956 when a committee of senior officials known as the Visits Panel was established by the Cabinet. Generally, this Panel co-ordinates the plans of government departments and agencies for official exchanges between Canada and the communist countries in order to obtain comparable advantages in reciprocal exchange agreements, helps with arrangements for unofficial visits to and from communist countries which it considers would be in the national interest and provides advice to the Canadian sponsors of such visits, makes recommendations concerning financial support for Canadian groups and individuals in the professional, academic and performing arts fields who are visiting the Soviet Union, and reviews Canadian policy and practices and current trends in exchanges with communist countries.

174. The Panel and its Secretariat seem to us in recent years to have faced their somewhat unrewarding task with considerable skill. Such difficulties as they have encountered have arisen partly from the limited authority of the Panel and partly from the inflexible attitudes of a number

of the concerned agencies and organizations. We appreciate that any attempt by the government to achieve complete control over all exchanges of visits with communist countries by individuals or delegations, official or private, for tourism, business or any other purpose, would of course be undesirable as well as impracticable. Nevertheless, we feel that some simple steps can be taken to improve the situation from the point of view of security without significantly affecting the rights and convenience of individuals.

175. At present, government departments are able to engage in preliminary discussion concerning prospective exchanges with communist governments, and are only required to submit details to the Panel when agreement in principle has been reached; often in fact negotiations have reached such a stage that useful intervention by the Panel in the interests of security or a balanced programme is difficult. Also, some departments and agencies are excluded either explicitly or by usage from the operations of the Panel. Our view is that there is no reason why any official or government-sponsored arrangements should be excluded from consideration by the Visits Panel, even during the preliminary stages of negotiation, as long as there is some assurance that this consideration will be reasonably realistic. Neither would we exclude official or government-sponsored professional or scientific exchanges from consideration. Whatever the needs in individual cases, the Panel can only maintain serious surveillance of the progress of the total exchange programme if it is fully competent to deal with all forms of official exchanges.

176. With regard to unofficial exchanges of visits with communist countries, we think that the Panel Secretariat should continue and expand the present arrangements by which contact is made with commercial, professional, industrial and academic organizations or similar agencies contemplating such exchanges, and their cooperation sought on an informal or semi-formal basis. The problem seems to us to be of especial significance in the case of academics and students. Western students and academics tend to spend fairly lengthy periods in communist countries, and are known to be particular targets of the comunist authorities; they are after all quite likely eventually to assume influential or sensitive posts in their home countries. Also, the experience of other western countries suggests that students and academics from communist countries often play significant roles in "talent-spotting" and recruiting agents in the west.

177. We do not wish to enlarge upon the difficulties which apparently hinder attempts to obtain useful cooperation in the academic fields, but we think that a special effort must be made to establish closer and more meaningful liaison with the universities and with such institutions as the National Research Council. The value of government advice, and the justified interest of the security authorities in these programmes, must be demonstrated to these institutions with tact and sophistication. The govern-

ment should take the position that, if situations in which visas have to be refused are to be avoided, invitations must be issued and programmes devised with due regard to such considerations as security and balance of advantage. At the very least arrangements must be made to ensure on the one hand that the number of students and academics from communist countries does not grow haphazardly, and on the other that Canadians taking part in exchanges are made aware of the dangers they will face.

178. The suggestion has been made that exchanges of both official and unofficial visits could be more readily reviewed and coordinated if they were undertaken within the framework of a formal cultural, technological and scientific agreement. Many countries, including the United States, Britain and France, have concluded such agreements with the Soviet Union and other communist countries. The usefulness of agreements of this kind from the point of view of security seems to us to depend upon their nature. If, like that concluded between the United States and the Soviet Union, they are comprehensive and detailed, and include, either in the agreements themselves or in annexes or protocols, detailed plans for exchanges of visits in all or most areas of concern for a given period, they would have obvious advantages. They would, for example, enable considerations of reciprocity and security to be taken into account during the advance bargaining and negotiations, rather than piecemeal or after the event. Simple agreements without details would seem to us to have little relevance to security.

VII. SECURITY OF INFORMATION AND PHYSICAL SECURITY

Security of Information

General Considerations

179. This chapter is mainly concerned with a variety of practical security procedures, most of which depend upon three factors: the preparation of sensible regulations; arrangements to implement and enforce these regulations; and the provision of such equipment and facilities as will enable them to be implemented effectively. We deal first with security of information or documentary security, that is, the classification, safeguarding, transmission, custody and destruction of documents; and we add comments upon the present Canadian Official Secrets Act and certain sections of the Criminal Code relating to security of information and material, and upon the question of administrative secrecy and access to government records for research and other purposes. In the second section of this chapter we deal with physical and technical security (the protection of buildings and offices against intrusion by physical, electronic and other means, and the protection of material within buildings and offices) and with communications security.

180. The basic Canadian Government regulations touch briefly upon most of the subjects we have mentioned above; their general intent is shown by the following extracts:

> "The instructions contained in this book lay down the minimum security requirements which all departments and agencies are to enforce. Because security is largely an interdepartmental problem, the need for consistency of security procedures among all departments and agencies is paramount. Security obviously cannot be satisfactorily maintained if one department applies less effective standards than another. The instructions which this booklet contains are therefore mandatory. Security control, however, is a departmental responsibility, and therefore an additional duty rests on each department and each official to take such further measures as may in particular circumstances seem necessary to meet the individual needs of a department.
>
> "Many of the regulations, however, are only deterrents to espionage, for there is no security measure which can fully protect a department or agency which may number a foreign agent among its employees. For this reason they must be supplemented by the initiative, vigilance and common sense of all persons who are permitted access to classified information. All departments and agencies handling classified information

are required by Cabinet Directive to appoint a security officer, whose responsibility it is to ensure that these regulations are effectively administered.

"The principle upon which all good security must be based is that classified information should be made available only to persons who have an appropriate security clearance and who need to have such information in the performance of their duties. It should not be made available to persons merely because of the positions they hold or the level to which they have been cleared for security. It is the responsibility of senior offcers to decide which information is or is not relevant to the duties of their staff.

"The regulations are being circulated to all departments and agencies, and may be usefully distributed to such senior officials as may require them. They are not, however, intended for distribution to all employees. The Panel has assumed that they will form the basis of departmental regulations designed to meet the particular circumstances of each department or agency."

181. In some countries regulations of this kind are embodied in statutes or otherwise have at least some of the force of law. In the United States, for example, they are the subject of a formal executive order. In Canada, however, these regulations have been regarded as administrative instructions; most departments and agencies in fact consider them as merely advisory, and their reactions to them have been varied. For example, the first step in compliance is clearly the preparation of departmental security instructions in general consonance with the government regulations but related to the circumstances of the individual departments. Only a few departments (including the Departments of External Affairs and National Defence) have in fact issued adequate and comprehensive instructions (most of these departments had done so before the government regulations were issued) and have taken any steps to enforce them and audit their enforcement. Twelve years after the government regulations were issued, many departments which in our opinion should have security instructions are without them, many have inadequate instructions and some take no effective steps to enforce even the general regulations.

182. Our inquiries into present standards of physical and documentary security have admittedly not been exhaustive, but we have vetted the security instructions and have physically examined the security posture and situation of some 20 departments and agencies including most of those with any serious responsibilities for the security of classified material. These examinations were not surveys in depth of the departments' security organizations and practices, but they were adequate to demonstrate in general terms current security standards, and they led to a conviction that standards of security of information and physical security within many departments and agencies of the Government of Canada need improvement. Some of the shortcomings arise from the reluctance of the central personnel and financial authorities to make available adequate resources for the security function; another part of the blame must be attributed to the senior officers of many

departments for their lack of understanding of the requirement and its importance; a further part of the blame must be laid at the door of the security authorities for their apparent inability to convince and educate the government and the public service of the need for security, and for their willingness to accept a largely passive protective security role.

183. As we have already suggested in Chapter III, we think the solution to these problems lies in making arrangements to provide expert advice to departments, to inspect and audit departmental security procedures and to train departmental security officers. If a new Security Service is established, these general protective security roles should fall within its terms of reference. In the meantime however we feel that immediate arrangements must be made to ensure that the Privy Council Office (or the new Security Secretariat we have proposed) and the Directorate of Security and Intelligence of the RCMP have clear joint responsibilities for training, inspection and audit, and for taking steps to ensure departmental compliance. Together, the two agencies should re-examine present regulations, in consultation with departments when appropriate and in the light of our comments on certain detailed points below. They should prepare new regulations for promulgation by the government, at which time departments should be allowed a specified period in which to create adequate and effective security staffs and structures and to make preliminary efforts at compliance. During these months departments should have available to them the advice of the two agencies, and on the completion of this period their efforts should be audited. Cases of non-cooperation, and cases in which the security posture of departments or agencies is unsatisfactory should be brought to the attention of deputy ministers and ministers either directly by the RCMP, or if necessary through the Security Secretariat.

184. Following this preliminary period, a continuing effort will be needed to ensure that compliance with regulations continues to reach reasonable standards, to educate senior officers, to train departmental security staffs, and generally to create throughout the government service an awareness of the requirement for and importance of the simple measures of protective security. If for any reason the Security Service considers that the security posture of a particular department is unsatisfactory, it should have authority to suggest a survey to the deputy minister concerned. In the unlikely event that the deputy minister is uncooperative, the Security Service should be able to appeal his decision to the Security Secretariat and the Secretary to the Cabinet. We would hope however that matters would rarely reach these straits. We would envisage, for example, a system of security liaison officers of the protective security branch whose duties would be to establish day-to-day working relationships with departmental security officers and staffs. One officer might well liaise with one (or perhaps two) of the departments heavily concerned with classified material; others might be responsible for liaison with groups of departments with less heavy security responsibilities and with similar problems. These officers would also of course provide the

links between the Security Service and the departments on personnel security matters, and would in fact bear the Security Service's recommendations to the departments and discuss them with the appropriate departmental officers. Our general suggestion, in fact, is that an interlocking security community or framework should be created within which departmental responsibility can be competently exercised.

185. Given reasonable regulations and instructions, adequate security staffs and sensible training programmes, there is no reason why breaches of security by individuals (which are almost always due to lack of training or to carelessness) should not be handled where necessary as matters of normal discipline. We can see no reason for example why an individual who consistently fails to put away classified documents, or to lock a safe, should not be subject to the same sanctions as if he had consistently arrived late at the office, or had been consistently absent.

Documentary Security and Classification Systems

186. The point has often been made in examinations of security procedures that one of the main objectives of an espionage agent is to procure information in documentary form. Therefore, it is argued, it is of considerable importance to prevent the unauthorized copying of classified documents and the unauthorized removal of documents from offices and buildings. We appreciate these arguments, although we think that the importance of documentary material is sometimes overrated. From the point of view of the receiving intelligence service, a document must be considered in its context. If it is a draft, or merely an individual's bright idea, or an outdated instruction, it may be of small value. Generally, documents must be available as part of a constant stream if they are to be of serious use, and a discussion with a well-placed, intelligent and trusted agent may well be worth many documents. In other words, we are sure that security of personnel (with all that this involves in terms of investigation, judgment and reinvestigation) is generally more important than physical or documentary security measures.

187. However, it is quite apparent that no conceivable system of personnel investigation and clearance can offer complete certainty that all cleared personnel will prove trustworthy. In fact, there are some grounds for suggesting that the most dangerous spies (or at least those who are potentially the most dangerous) are amongst those who may succeed in evading personnel security precautions, or about whom favourable judgments may well be made. Therefore, steps must be taken to ensure a reasonable standard of formality and security in the handling of classified documents. The first step in this process is to ensure that sensible regulations govern the classification of documents.

188. The categorization of documents and material according to their apparent sensitivity is a basic, though slightly illogical, part of the security

system. Theoretically, a document is either secret (in the common sense of the word) or it is not. Any further distinctions involve curious concepts such as partly secret documents that may be seen by partly reliable people. In fact, and in spite of a certain mystique that has grown up around the subject of classifications, the reasons for categorization are primarily economic. It has presumably been judged that the risks involved in less than optimum security standards (of personnel investigation or of physical security) can be accepted for certain classes of documents.

189. At present a single classification system is effectively in use throughout most of the western world, although there are a number of exceptions. We quote below the definitions officially in use in Canada, together with some extracts from the principles governing classification.

"Definitions of Classifications

"1. All official documents produced by the Canadian public service are the property of the Canadian Government. Most of these documents, together with those on loan from other governments, require some form of protection. The degree of security protection that a document requires will be indicated by a classification placed preferably in its top right-hand corner . . .

"2. The following are definitions of the four classifications together with examples of their application . . .

Top Secret

"3. Documents, information and material are to be classified Top Secret when their security aspect is paramount, and when their unauthorized disclosure would cause exceptionally grave damage to the nation. From this general description it will be seen that the classification of Top Secret should be used only rarely. When it is used, the user should first be certain that all the special measures which are contingent upon its use are in fact fully justified. The following are examples of subjects falling within this category:

(*a*) Documents or material containing plans for the defence of the nation as a whole or of strategic areas vital to its defence;

(*b*) Information on new and important munitions of war, including important scientific and technical developments directly connected with the defence of the nation;

(*c*) Detailed information on new or proposed defence alliances, and on the defence plans of allied nations.

Secret

"4. Documents, information and material are to be classified Secret when their unauthorized disclosure would endanger national security, cause serious injury to the interests or prestige of the nation, or would be of substantial advantage to a foreign power. The following are examples of subjects falling within this category:

(*a*) Minutes or records of discussions of Cabinet or Cabinet Committees;

(*b*) Documents or material containing plans for the defence of areas and installations of other than vital strategic importance;

(*c*) Documents or material directly pertaining to current and important negotiations with foreign powers;

(*d*) Particulars of the national budget prior to its official release;

(*e*) Information about foreign powers, the value of which lies in concealing our possession of it;

(*f*) Information about new and important scientific and technical developments pertaining to national defence;

(*g*) Information about the identity or composition of scientific or military units employed on operations involving techniques, the knowledge of which would be of substantial value to a foreign power.

*Confidential**

"5. Documents, information and material are to be classified Confidential when their unauthorized disclosure would be prejudicial to the interests or prestige of the nation, would cause damage to an individual, and would be of advantage to a foreign power. The following are examples of subjects falling within this category:

(*a*) Information of a personal or disciplinary nature which should be protected for administrative reasons;

(*b*) Minutes or records of discussions of interdepartmental committees when the content of such minutes or records does not fall within a higher category;

(*c*) Political and economic reports which would be of advantage to a foreign power but which do not fall in the Secret category;

(*d*) Private views of officials on public events which are not intended to be disclosed.

Restricted

"6. Documents, information and material are to be classified Restricted when they should not be published or communicated to anyone except for official purposes, and when they are not classified in any of the three previous categories . . .

"General Principles Governing

Classification of Documents

"8. The following important principles should be borne in mind in giving a classification to a document:

(*a*) Each document will be classified on its merits by reference to its contents and their implications and not by reference to an automatic test e.g., the classification of other documents in the same series . . .

(*b*) It should be borne in mind that the source of the information contained in a document may justify a higher classification than the information taken by itself would at first seem to warrant, e.g., Confidential information obtained from a very delicate source may justify the classification of a document as Secret. That is, the process by which the information was obtained may require more protection than the information itself.

(*c*) The tendency to give too high a classification to information is a natural one, but the result is to clog the machinery for dealing with documents and to allow personnel to become so familiar with handling highly classi-

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"*Documents which are 'Confidential' not in the sense of a security classification as used here, but merely private and personal, should be marked *"In Confidence"* or *"Private and Personal"*. These designations can be used, for instance, on certain letters to provincial governments or to commercial organizations where the contents are for the private information of the addressee and must not be made public, but do not need the protection given to a document bearing the security classification 'Confidential'."

fied material that the significance of the classification becomes obscured, particularly if persons handling the material recognize that it is over-classified.

(*d*) The classification appropriate to a document may alter with the passage of time, and departments should arrange to review classified documents as and when required. Documents received from other departments should not be downgraded without the approval of the originating department. In the case of reports from intelligence sources, factors other than the contents of the report may need to be considered . . . It is strongly recommended that the originating departments indicate wherever possible, either at the time of issue or later, that a document may be downgraded after a given date or event."

190. It will readily be understood from these quotations that the accurate classification of documents is a demanding task, requiring experience and understanding of the implications of the compromise of a given piece of information. In practice, of course, in many departments there is an obvious tendency to "play safe", especially on the part of more junior officials, and to classify too much or to overclassify. This is of concern because it is to be presumed that security precautions will be more effective the more limited the area they attempt to cover. In any case, additional and unnecessary precautions will be wasteful and hindering, while overclassification will in the long term tend to bring the idea of security into disrepute, at least among more sophisticated public servants.

191. It was the opinion of most of those concerned with the question that overclassification was a general current problem. Unfortunately, these experts were quite uncertain as to what steps should be taken to improve the situation. Suggestions included total revision of the system, even to the extent of employing only two categories—classified and unclassified; the introduction of two classification systems, one for so-called "administratively classified" documents, and the other for "defence classified" documents; more rigid control of authority to classify, at least to the higher levels of classification; redefinition of the present classifications; and systems for the review of classification of documents after action on them had been completed and before they were finally filed.

192. We have considered these and similar possibilities in some detail, and while we understand the current concern about overclassification, we find ourselves unable to suggest any very sweeping changes in present procedures. Although they are not necessarily overriding, there are considerable advantages to be gained from retaining a system which is generally in consonance with those of our allies. The present system is reasonably well understood and established, and it would appear to us that very compelling arguments would need to be advanced for major changes. We agree, for example, that the definitions in current use are much too vague to offer a great deal of guidance to an official faced with an individual case, but we have found it difficult to redraft them in terms that are likely to be much more meaningful or helpful. We think the best that can be done is to ensure that each depart-

ment or agency issues its own specific security instructions and includes examples of classification from within its own experience. It should be noted also that it is rare for an official to approach a classification problem completely "cold"; there will be a background of data on the file or in the official's own experience which will assist with the problem. In departments only occasionally concerned with the question advice should be available from superiors or security staffs.

193. It seems to us that the obverse of this problem of overclassification is also of significance in some areas. For example, in the scientific branches of certain departments which are only occasionally concerned with genuinely sensitive matters, there are undoubtedly pressures to underclassify unwisely in the interests of scientific freedom or publication. It is also less usual in branches of this kind for scientific papers to be reviewed with the possible need for classification seriously in mind. Ultimately of course a true solution to this general problem of correct classification will only be found in adequate training, education and security awareness. It may well take a long time to reach satisfactory standards, but once they have been reached many of these apparently intractable problems of over- and under-classification will tend to diminish.

194. Neither do we think there are any great advantages to be gained from an attempt to distinguish between "administratively classified' documents and "defence classified documents". The present system of classification seems to us to present few problems in this connection. Most documents that may be classified for administrative reasons can in broad terms be said to come under an undramatic interpretation of the definition of Confidential: they would be prejudicial to the interests of the nation or cause damage to an individual. We would not discourage departments or agencies which have special markings in use for (say) personnel matters, but we think that one of the normal security classifications (usually Confidential) should be used if it is intended that the document in question should come within the cognizance of the official security of information system. We realize also that special arrangements are in force in appropriate departments to protect the privacy of such information as income tax returns and commercial statistical data, and we would not suggest any changes in these procedures.

195. We do think however that in the area of classification consideration should be given to one particular anomaly. This is the fact that, since no government information may be made public without due authorization, the classification Restricted is superfluous, and may indeed even mislead officials into revealing information not so marked. We think therefore that the use of the classification Restricted should be abandoned, and that information which it is important to protect should form part of the regular security system, and should thus be classified at least Confidential. Documents without any security markings would then be protected from publicity solely by the normal disciplinary rule that communications to the press and public may

be made only with the authority of specified officers. The Oath of Office and Secrecy which gives expression to this rule is taken by all officials; while it appears to us to have no legal significance, it may serve as a warning against the unauthorized publication of official information.

Declassification Programmes

196. Classification markings are often ephemeral. For example, a document may be highly classified one day because it argues the case for a policy in the making. As soon as the policy is announced, the same document is of historical interest only, and can certainly be downgraded, if not entirely declassified. There are many views on the implications of the question of declassification. Some maintain that the advantages of downgrading or declassifying documents are not worth the effort involved; an accumulation of "dead" and overclassified files is a tolerable minor nuisance. Some suggest that effective efforts must be taken to strip and reclassify files, if only in the interests of reducing the need for expensive secure storage facilities. Others have attempted to introduce an administrative system by which certain categories of documents are automatically downgraded at regular intervals.

197. Ideally, of course, it is quite clear that changes in classification should be formally made at appropriate times, and the markings on the documents amended. Our own view however is that this ideal is quite impossible of achievement. We think it would be unacceptably extravagant of effort to insist that all departments and agencies examine their total records solely for the purpose of declassification. We think that no general downgrading system can be devised which will apply automatically to the whole possible range of classified material, although we are also aware that some departments (especially the Department of External Affairs) must make arrangements to re-examine records at regular intervals if the requirement to release many of these records for historical research and public appraisal after a given period of years is to be met.

198. We think that declassification is an area in which departmental judgment must be permitted to play a large role, subject only to the condition that records, while they remain classified, must remain the responsibility of the department holding them, and that no documents should be declassified without the agreement (either individually or by category) of the originating department. We suggest that the file-stripping programmes which are in force in some departments be extended to cover the question of classification, although we realize that this will tend to delay the programme, as in many cases the judgment of relatively senior officers will be required. In general we suggest that departments should be constantly reminded of the value of downgrading documents and that officers should seize any opportunity to amend the classifications of papers that come to their attention in the course of their duties.

Handling of Classified Documents

199. Assuming that documents are properly classified, there are a number of measures which need to be taken in the handling of these classified documents. First of all, certain restrictions concerning the copying and removal of such documents need to be observed. Some quite simple measures are possible. Copying of classified documents should be centralized, and records kept. These, together with records of persons entering or leaving buildings at unusual hours, should be subject to examination and audit by security staffs. We also think that insufficient attention has been given to the handling of classified documents in departments or branches in which only a small number of the officials and staff is cleared. In departments such as National Defence and External Affairs where classified material is commonplace, it is normal practice to set aside certain rooms or areas for the handling of special categories of very highly classified information; these areas are under the control of specified staff, and the documents in question may only be consulted and worked on within these areas. We think that in departments in which classified material is uncommon, similar arrangements should be made for Secret or Top Secret material.

200. Arrangements of this kind would eliminate the present problem of shared offices and offices (readily accessible to uncleared staff) left empty at lunchtime with classified documents lying on desks. Security breaches of this nature seem to be almost routine in some departments. We feel that they should be the subject of consistent and rigorous disciplinary action. We would add, however, that they will only be detected if security staffs are adequate, and aware that part of their responsibility is to make regular checks of offices where classified material is held or handled.

201. In addition, we think that more attention should be paid to what is known as the "need-to-know" principle. This means that classified information should be disseminated no further than is necessary for the conduct of business. This principle is extended in the cases of certain very highly classified categories of material to the establishment of lists of those persons who are "indoctrinated" for access to the material. This process serves both to control access, and to provide a starting place for investigation in the event of loss or apparent compromise. We think it may be useful to establish similar formalized indoctrination arrangements, at least for persons with access to Top Secret information, and especially in departments where highly classified material is rare. In addition, we think that a central list of all persons with access to such information should be maintained by the Security Secretariat.

The Official Secrets Act

202. We have several times stated our view that security procedures are not primarily legal in character, but administrative and disciplinary. How-

ever, one important legal issue is directly related to security of information: this is the adequacy of the present Official Secrets Act and certain provisions of the Criminal Code.

203.The United Kingdom Parliament enacted its first Official Secrets Act in 1889. This Act was repealed in 1911 and replaced by a new statute which applied to Canada as well as to the United Kingdom (1 & 2 Geo. 5, chap. 28). In 1920, the United Kingdom amended its Act on the basis of its experience during the first World War, but specifically provided that the amending statute was inapplicable to Canada (10 & 11 Geo. 5, chap. 75). In May 1939, under the stress of forthcoming hostilities, the Canadian Parliament repealed the 1911 British statute and passed the present Canadian Official Secrets Act, which is in fact a very slightly reworded consolidation of the 1911 and 1920 British statutes. The Canadian Act (R.S.C. 1952, c. 198) has been amended twice, first in 1950 when the maximum penalty under the Act was increased from seven to fourteen years imprisonment, and secondly in 1967 when minor changes were required as a result of the Canadian Forces Reorganization Act (S.C. 1966-67 c. 96). At Appendix "C" are copies of the English and French texts of the Canadian Official Secrets Act, and of extracts from the Canadian Forces Reorganization Act.

204. The Canadian Official Secrets Act is an unwieldy statute, couched in very broad and ambiguous language. A large part of the confusion which attaches to the Act in Canada has arisen from its use of the phrase which first occurs in section 3(1)(c): "any secret official code word, or pass word, or any sketch, plan, model, article, or note, or other document or information"; this was mistranslated into French from the English original as "un chiffre officiel ou mot de passe, ou un croquis, plan, modèle, article, note ou autre document ou renseignement". The same phrase (with a similar translation) also occurs in later sections of the Act, but the phrase is sometimes turned as "official document or secret official code word or pass word", or "sketch, plan, model, article, note, document, secret official code word or pass word or information", etc. In fact there is sufficient inconsistency in the Act for there to have arisen in Canada a question as to whether the words "secret" or "official" qualify only "code word", or "code word or pass word" or (more importantly) also the words "sketch, plan, model, article, or note, or other document or information". In other words, must the Crown prove in all cases that the information concerned is secret and official? If so, an espionage operation directed towards the collection of information in the public domain, or within the possession of a government agency but not classified (such as much information in government files) might not constitute an offence under the Act.

205. Strangely enough, the interpretational problem has never become acute in Britain where opinion generally has been consistently in favour of the view that all affairs of government are within the meaning of the Act,

whatever their security classification, or even if they have no security classification (see, for example, Rex. v. Crisp and Holmwood [1921] 1 K.B. 451).

206. In Canada, however, a good deal of confusion was caused by the decision rendered in the case of Rex. v. Biernacki (1962) 37 C.R. 226. The accused had collected information on the antecedents, social status, employment and character of Polish immigrants. It was evident that the information had been collected for use in, or in the course of, espionage operations. However the Court discharged the accused at the conclusion of the preliminary hearing, holding that the information collected was neither "secret" nor "official" and that to collect such information (even during the course of an espionage operation) was not an offence under the Official Secrets Act. A similar view was taken by a Judge of the Quebec Court of Appeal commenting on one of the arguments in the case of Rex. v. Boyer (1946) 94 C.C.C. 195. He remarked that the Official Secrets Act, by its very title, indicated that its provisions did not apply to what had already been published or publicized or had fallen into the public domain.

207. In addition, the Act contains unusual evidential and procedural provisions relating to espionage cases. For example, the Crown need not prove that an accused is guilty of any particular act tending to show a purpose prejudicial to the interests of the state; it need only appear so from the circumstances of the case or the conduct or character of the accused. If information "relating to or used in" a prohibited place, or "any secret official code word or pass word is made, obtained, collected, recorded, published or communicated" without authority it shall be deemed to have been so made, obtained, etc. for a purpose prejudicial to the safety or interests of the state unless the contrary is proved. Again, unless the contrary is proved, the fact that an accused has been in communication with or has attempted to communicate with an agent of a foreign power is considered to be evidence that he has for a purpose prejudicial to the safety or interests of the state obtained or attempted to obtain information that might be directly or indirectly useful to a foreign power. Unless he proves to the contrary, an accused is deemed to have been in communication with an agent of a foreign power if he has visited the address of or consorted or associated with such an agent within or without Canada, or if the name and address of an agent, or any other information regarding an agent is found in his possession. The Act defines in very broad terms who is regarded for the purposes of the Act as an agent of a foreign power and when an address is deemed to be that of an agent of a foreign power.

208. These provisions appear extraordinarily onerous, although of course prosecutions under the Act cannot take place without the approval of the Attorney General and this requirement should normally afford protection against unnecessary use. Further, it is fairly clear from at least one case (Rex v. Benning 4 C.R. 39 (1947—Ont. C.A.)) that an entirely "technical" charge, based in this instance only on evidence of communication with

agents of a foreign power (Section 3(4)) and with no evidence that the accused has obtained any information that might be useful to a foreign power or passed such information to them, is not likely to be sustained by the courts. In addition, it should be noted that a large proportion of Canadian prosecutions relating to official secrets have been conducted under the sections of the Criminal Code (408(1)(d) and 408(2)) concerning conspiracy. A prosecution for conspiracy to commit an Official Secrets Act offence is a prosecution under the Criminal Code; it does not require the Attorney General's fiat, nor are the procedural and evidential rules and advantages of the Official Secrets Act available to the prosecution. However, in spite of these qualifications we feel that the present Act is too broad and too rigorous.

209. We have given some thought to the ideal content of an Official Secrets Act. In our opinion, such an Act should in the first place protect all classified information from any unauthorized dissemination, whether or not the purpose of such dissemination is prejudicial to the interests of the state and whether or not the information is intended to be directly or indirectly useful to a foreign power; possibly (as in the British Act) offences due to carelessness should be treated as misdemeanours (summary conviction offences) rather than as felonies (indictable offences) and thus carry reduced penalties, but the Act should have general application as far as classified material is concerned. A certificate from a responsible minister that the classification of given material was necessary and appropriate in the national interest should be accepted by the courts.

210. Secondly, the Act should protect unclassified information from attempts at collection and dissemination which are prejudicial to the interests of the state or intended to be useful to a foreign power. The fact that such attempts are systematic, clandestine, conducted for payment or carried out under the direction of foreign agents should be evidence that they are prejudicial to the state or intended to be useful to a foreign power.

211. Apart from the two provisions we have mentioned (relating to classification in cases involving classified information, and relating to purpose in cases involving unclassified material), we see no reason for other major unusual evidential or procedural arrangements. We think however that prosecutions should continue to require the Attorney General's fiat; also the Act would undoubtedly require sections comparable to those in the present Act concerning, for example, definitions of agents, harbouring spies, attempts and incitements, powers to arrest and search without warrant and *in camera* hearings. We think there is a good deal to be said for the view that conspiracy to commit offences against an Official Secrets Act amended as we suggest should be included as an offence in the Act itself.

212. Some countries manage without a formal Official Secrets Act, and rely upon statutory provisions concerning espionage and other specific offences. Nevertheless, it is possible that an Official Secrets Act may have

some deterrent effect, and it was in fact the almost unanimous attitude of the authorities in those countries without such an Act to envy those who had one. On balance, we think that in Canadian circumstances an Official Secrets Act is desirable.

213. However, we have said enough to indicate that we think the present Act is unsatisfactory from a number of points of view. We have considered the possibility of relatively minor amendments, but we feel that any such attempts would inevitably call the whole Act into question. There may be no urgency about the matter, but we nevertheless think that consideration should be given to a complete revision of the Canadian Official Secrets Act, bearing in mind the points we have mentioned.

214. A wide variety of Criminal Code provisions may be relevant to security. These include, first, the sections relating to treason, sabotage and sedition; secondly, sections which may be invoked to prosecute certain breaches of security, including bribery, attempts to weaken the loyalty of officials, or breach of trust by a public officer; thirdly, sections which could apply in conditions of political or social unrest, such as intimidation of Parliament, unlawful assembly or rioting and unlawful military training; and finally, sections which deal with crimes that could be committed in the course of espionage or subversive activities, such as making a false statement to procure a passport, fraudulent use of a citizenship certificate, spreading false news, making use of official papers, personation or mischief.

215. Most of these provisions require no comment, but the section of the Criminal Code concerned with treason should be mentioned. This reads in part:

> "46. (1) Every one commits treason who, in Canada, . . .
>
> (*e*) without lawful authority, communicates or makes available to an agent of a state other than Canada, military or scientific information or any sketch, plan, model, article, note or document of a military or scientific character that he knows or ought to know may be used by that state for a purpose prejudicial to the safety or defence of Canada; . . .
>
> (*h*) conspires with any person to do anything mentioned in paragraph (*e*) or forms an intention to do anything mentioned in paragraph (*e*) and manifests that intention by an overt act."

Section 47 provides that the maximum penalties for offences under these subsections are death or life imprisonment in wartime, and fourteen years imprisonment in peacetime.

216. These provisions concerning treason in the Criminal Code clearly overlap with the Official Secrets Act. If they are necessary at all, we find their restriction to military or scientific information difficult to understand. If this section remains in the Criminal Code (possbly on the grounds that it may be useful in wartime), it should be expanded to apply to information of all kinds.

Administrative Secrecy

217. Some controversy has in recent years centred around the extent to which governments maintain that their administrative activities and documents should remain confidential unless and until the government concerned chooses to reveal them. In many countries various professional groups, including journalists, scientists, lawyers and historians, have complained about the adverse effects of so-called administrative secrecy.

218. It is in fact true that some countries—notably Sweden and the United States—have arrangements by which the public ostensibly has access to a great deal of administrative information that is not available to the public in, for example, Canada and Britain. The constitutional principle of publicity in administration has applied in Sweden since 1766. Theoretically, all state documents are public, and a department is required to produce any document or file at the request of any citizen or any representative of the press, radio or television, who need give no reason nor declare any specific interest. However, the practice is very complex and there are a number of exceptions, including documents concerned with defence and foreign policy, personal files, especially in the social service ministries, informal memoranda and certain drafts.

219. The position in the United States is rather different. A relatively new Public Law—the Freedom of Information Act of July 1967—permits public access to certain documents, if the inquirer can identify them and if they are unclassified. There are certain exempted classes of records, which vary slightly from department to department; if the regulations are interpreted broadly, the exempted categories are large.

220. The question of unofficial historical or other research is dealt with in the United States as a separate issue. The State Department, for example, recognizes three "periods" with respect to its records. First there is a "closed" period covering the more recent years; during this period, foreign policy records are in general closed to access by non-official researchers in advance of the publication of the Department's documentary series entitled "Foreign Relations of the United States"; the beginning date of this closed period is advanced automatically as the annual "Foreign Relations" volumes are released. Secondly, an "open" period extends from the earliest days up to 30 years before the current year; foreign policy records for the open period are in the National Archives and may be consulted under regulations issued by the National Archives. Thirdly, there is a "restricted" period between the open period and the closed period; access to foreign policy records in the restricted period is confined to qualified researchers who are United States citizens and who demonstrate a scholarly or professional need for the information contained in such records. Additional restrictions are in fact included in the regulations. Access to foreign policy records is not given if their publication would be contrary to the interests of national defence or

foreign policy; and such records would include any that might tend to prejudice the conduct of foreign relations, might tend to give needless offence to other nations or to individuals abroad or would violate confidence. Neither, of course, are records originated by another government or another agency of the United States Government made available without permission. On the other hand, application may be made for a specific relaxation of the regulations, and for access to certain records during the restricted or closed period.

221. The situation in Canada is less formal. In the absence of any statutory provision (other than the Official Secrets Act) either forbidding or permitting access to government records, departments have had to treat individual applications on their merits. As far as the Department of External Affairs is concerned, its files include so many documents originated by other governments intermingled with its own material that it has felt obliged not to release these files unless or until the foreign documents are released by the government concerned. Up to the time the Governor General ceased to be the channel of communication with the British Government, a very high proportion of the files contain documents which are, technically at least, British documents. It has therefore been considered necessary not to release some files containing British documents until such files are "open" in Britain. Until recently, under the provisions of the Public Records Act of 1958, such records remained "closed" until they were 50 years old; but it is now British policy to open records after 30 years. Most other countries are as restrictive as the British, or more so.

222. Although general access to Canadian files has for these reasons been restricted to those 50 years old or more, in a few cases where few non-Canadian records were involved and where material was not sensitive, controlled access by serious researchers has been permitted to records of somewhat more recent date. In addition, the Department of External Affairs is preparing for publication a series of documents under the general title *Documents on Canadian External Relations* which will make available to scholars all significant documents of the "open" period. This publication should go far to meet the legitimate needs of researchers for documents, and thus minimize requests for access to files.

223. We are not required to make general recommendations about these problems, but, as far as Canada is concerned, we would view suggestions for increased publicity with some alarm. We think the knowledge that memoranda might be made public would have a seriously inhibiting effect on the transaction of public business. We believe that the process of policy-making implies a need for wide-ranging and tentative consideration of options, many of which it would be silly or undesirable to expose to the public gaze. To insist that all such communications must be made public would appear to us likely to impede the discussive deliberation that is necessary for wise administration. In Canada, the bureaucracy is not vast, and the number of serious

inquirers quite small. It seems to us that there is no reason why controlled access to specific administrative files or documents cannot be permitted and arranged on an ad hoc basis when a genuine requirement can be established.

224. However, as far as historical and other research is concerned, we think the lack of a stated government policy a serious handicap and we suggest that steps should be taken to remedy this situation by making public appropriate regulations. It is important that our regulations should remain in step with those of Britain since our files (and especially the earlier ones) contain so much British material; it is also important that we remain in step with the United States. In practice, there seems to be no alternative to a "thirty year rule". From the point of view of security we must point out that there is some material (mainly intelligence and security material) which for a variety of good reasons should not be made public even after thirty years, and adequate arrangements must be made to strip files of such material before the files are made available to the public.

Physical Security

Buildings and Offices

225. During working hours, the security of buildings and offices (or at least the protection of classified information used and handled in these offices) is the responsibility of those working in them. As we have suggested, standards of security in this area are often poor, and must be improved, but this is a matter of departmental training and discipline. Nevertheless we do regard it as surprising that so many buildings in Ottawa, including buildings in which highly classified material is held, are accessible to the public without hindrance during working hours. Certainly the East Block is one of the very few freely accessible central Cabinet and Foreign Offices in the western world.

226. Responsibility for the guarding of government buildings containing classified information during silent hours is however somewhat diffuse. In some cases (where one department occupies most of a given building), it is that department's responsibility to request a security survey by the RCMP, to hire Corps of Commissionaire or other personnel as guards (if it wishes to do so), and generally to maintain an adequate standard of protection. Where no single department or agency occupies most of a building, the RCMP assumes responsibility on a direct request from one of the occupying departments.

227. This situation seems to us unsatisfactory. We think it should be government policy that any building which contains classified information should be subject to a security survey, and placed under guard during silent hours. In some cases, where (say) only confidential information is held, it may be possible to compromise on some system of electronic intrusion alarm plus regular inspections. In general, however, the basic principle that build-

ings containing classified material should be effectively protected at all times must be upheld. Consideration should also be given to the establishment of an "escort" system for visitors to the more sensitive buildings during working hours.

228. It will, of course, become part of the responsibility of the protective security branch of the Security Service to play an active role in physical security, to survey all government buildings which contain classified material and to audit the implementation of government policy and regulations. In the meantime we feel that urgent steps are necessary to acquaint departments and agencies with the requirement for guards and to ensure that at least preliminary steps are taken toward their introduction as necessary.

Technical Security

229. One aspect of physical security is generally referred to as technical security, and is concerned with protection against electronic eavesdropping and telephone interception, and with a variety of other technical subjects. A number of Canadian agencies are involved in one way or another with these matters. We think that all the present agencies concerned with technical security should be combined in one part of the protective security branch of the Security Service. Relevant technical expertise is limited in Canada and must be pooled if an adequate service is to be provided in this field.

230. Technological advances, including the increasing use of computers, have given rise to a range of other new security problems, some of which can be solved fairly simply, but some of which are relatively intractable without considerable effort. There seems to us no doubt that the process of technological innovation will continue to create problems of this general kind, and that a serious research and developmental effort will be required from the technical security authorities.

Communications Security

231. With regard to the security of governmental information transmitted by telegraphic means, we are satisfied that the regulations which prescribe that all classified telegrams shall be enciphered and handled under conditions approved by the competent authorities are in general observed. The cryptographic systems in use in Canada seem to us to provide adequate security.

232. The situation with regard to the security of telephone conversations is much less satisfactory. From what we have heard, we do not believe that there is sufficient awareness, even in senior governmental positions where it is most important, that the telephone is a basically insecure instrument, and that therefore classified matters should not be discussed on the telephone.

VIII. EXTERNAL AFFAIRS AND NATIONAL DEFENCE

External Affairs and the Foreign Service

233. It is quite evident that security in the foreign service is a matter of special importance. Staff are dispersed, and in many countries, especially the communist countries, they are clear and obvious targets for hostile intelligence attack. This is true not only of officers of the Department of External Affairs, but of officers and employees of the many other departments with staff abroad. In fact, officials and employees of the Department of External Affairs represent less than one-third of the nearly 7000 Canadian employees stationed abroad and the list of departments with such personnel is surprisingly lengthy, including for example National Defence, Trade and Commerce, Defence Production, Manpower and Immigration, Finance, Atomic Energy of Canada Ltd., and the Emergency Measures Organization. It must be understood that the attention of hostile intelligence services is not directed only towards those who have access to classified information. Officials or employees without access may become useful sources of information, not about classified matters, but about other individuals employed in the post or the service. This information may later be used to compromise or entrap the officials who do have access. There is no dearth of examples and case histories to demonstrate the truth of the statement that Canadian officials serving abroad are targets of hostile intelligence attack, especially in communist countries; and some years ago the Department of External Affairs itself suffered from serious security problems particularly at certain missions within the communist countries. Many reasons have been advanced for the existence of these problems—hasty recruiting during a period of rapid expansion, for example, and the attraction of the foreign service for individuals with certain character defects. Although there is no doubt that many of the factors giving rise to these situations have been minimized, the existence of such problems reflects on the past effectiveness of the departmental security system.

234. The present security organization of the Department of External Affairs is established within a Division which is also responsible for a variety of other functions. The security organization overseas includes Regional Security Officers, post security officers appointed by heads of missions, and security guards recruited especially for service at posts abroad.

235. In theory, heads of posts abroad are responsible for the security not only of the External Affairs missions but also of the offices of other government departments; they are instructed to ensure that all classified information is given adequate protection by representatives of Canadian Government departments and agencies to whom it may be entrusted, and that classified information is handled and stored in accordance with the regulations. Canadian posts abroad have been divided into three categories:

(*a*) Posts where all Canadian departments and agencies share the same premises. At these, the head of mission undertakes responsibility for all security measures affecting the security of the post;

(*b*) Posts where Canadian departments and agencies are located in the capital city with some offices outside the main chancery premises; at such posts, a local security co-ordinating committee can be formed by the head of mission, consisting of representatives of all departments and agencies concerned, to advise on local security problems and report to the head of mission;

(*c*) Posts outside and at some distance from the capital city, where the head of mission cannot assume any direct responsibility for security. At these, the head of the local post is responsible for security, in consultation with the head of mission in the capital city or the Department of External Affairs.

236. Post security officers are responsible for the day to day application of security regulations and for the formulation of local security orders. The Regional Security Officers provide guidance and assistance in security matters to posts within their region and inspect, report upon and supervise arrangements at these posts. Upon receipt of a report from a Regional Security Officer, a head of post takes such steps as are within his authority to correct any fault, and if the recommended action exceeds his own authority he seeks approval from the Department.

237. Our general comment on this organization is that we are not sure that the structure is properly adapted to the size of the present operation, and to the sophistication of the attack. We feel it may retain vestiges of the time when the Department of External Affairs was small and could be managed on an informal basis, and when few Canadians were stationed abroad. We think that the establishment of a separate Security Division within the Department is probably justified.

238. A number of other points also need consideration. In the first place, it is quite clear that in spite of the theoretical tidiness of the instructions, there exists a great deal of confusion in posts abroad concerning responsibility for the security of Canadian offices and personnel. The responsibility of the head of post is not always understood by the other departments; and, in fact, when the head of a post attempts to exercise his responsibility towards other departments, he frequently finds it difficult to do so. Some post security

officers, acting as agents for heads of posts, assume responsibility for the inspection and supervision of the security of all government departments located in the same country, but most do not. Whether they do or do not appears to depend largely upon the seriousness with which they and their local superiors regard the security function.

239. We think that this matter is too important to be left to the whims of those on the spot. It must be made quite clear to all concerned (if necessary by some form of general security instruction applicable to all departments with representatives abroad) that the head of post is responsible for all Canadian security measures in the country to which he is accredited, and that the post security officer acts on his behalf. The post security officer must have full authority to supervise the security of the offices of other departments; he should, for example, maintain a list of the security clearance status of all Canadians officially in the country; he must have access to relevant information concerning the personnel in the post, and when necessary to the security staffs at the headquarters of the other departments in Ottawa. In practice, of course, any departments and agencies dealing with classified information must have security officers of their own on the spot, and a good deal of delegation of responsibility by the post security officer will be necessary, especially in posts such as London and Washington where there are large staffs in buildings quite separate from the Chancery, or where offices are located in cities other than the capital. Nevertheless, the principle of audit, inspection, recommendation and ultimate enforcement by the head of mission and his security officer should be preserved.

240. Such a plan is only practicable if the post security officer is reasonably trained. At present, heads of posts have probably become at least slightly acquainted with some security problems in the course of their progress through the service, but there is no guarantee that a post security officer has received any more than the short security indoctrination offered to all personnel before posting outside Canada. Whether he is trained or not depends on the exigencies of the service and the initiative of his head of post or head of Chancery.

241. We think that the function of post security officer should be the primary responsibility of an adequately trained officer of sufficient status to advise and influence heads of missions and officers from other departments at all posts abroad; this is especially necessary in large posts or in posts with special security problems, such as all those within the communist countries and some outside. In a few cases, the appointment of a full-time security officer would appear to be justified, but training and status seem to us to be the factors of primary importance. We realize the difficulty of providing personnel for a system of this kind, but we can see no reason why other departments and the Security Service itself cannot be used as sources of experienced and suitable security officers for special posts on a secondment basis.

242. Standards of physical security at missions abroad are very varied. We are disturbed by the number of Canadian Government offices abroad located in commercial buildings to which the public has access throughout the day and night, and in which classified material is left unprotected except by a safe during silent hours. In some locations there are inadequate arrangements for the separation of areas in which classified information is handled and areas in which locally engaged staff work. However, we understand that steps are being taken to rectify these situations. In addition, all the information we have received leads us to believe that the present calibre of some of the security guards in Canadian missions is unsatisfactory. We realize the difficulties of recruiting suitable personnel for such duties and providing them with a useful career, but we think this problem must be solved if adequate security is to be maintained.

243. Generally, we consider that more attention must be paid to the problem of providing reasonable standards of physical security at posts abroad. Trivial financial considerations should not be allowed to enter into matters with possible security implications; we were told for example of instructions to change a cleaning contract from a known and trusted firm to an unknown company because of a marginally lower bid. The fact that such instructions are issued suggests to us that there is a need for greater awareness of the realities of the security problem amongst those responsible for financial administration in Ottawa.

244. The operations of the Canadian Government abroad are very dependent upon the assistance of locally-engaged staff (usually nationals of the country in which they are located) as interpreters, messengers, cleaners, drivers, and so on. This gives rise to a number of issues which vary with the location of the mission. In communist countries there is no doubt that all staff should ideally be Canadians (just as the whole staffs of Soviet missions in the west are Soviet nationals) because local employees are usually members of the intelligence service of the country concerned, and can report on Canadian staff and readily install intrusion devices. However, in spite of the dangers, we agree that a programme to change the present situation would not be feasible, even if the local authorities in communist countries would permit it. The employment of foreign nationals means however that a very high standard of security discipline must be maintained in such missions.

245. The dangers at posts outside the communist countries are perhaps slightly less acute, but they exist nevertheless. In many countries there are great difficulties in identifying communist agents and sympathisers. Further, in such countries there is perhaps a greater tendency to recruit local staff for more responsible posts, which may require some access to classified material. Except in the most exceptional circumstances, we think that such tendencies, which are largely apparent in departments other than External Affairs, should be resisted.

National Defence and the Armed Forces

246. The Department of National Defence is also a department with important security problems, partly because of the very large volume of classified material which it holds or generates, and partly because of the large numbers of its personnel who require security clearance. The Deputy Minister is responsible to the Minister of National Defence for the security of the whole Department in accordance with the security policies and directives laid down by the government. Within this framework the Chief of the Defence Staff is responsible for the security of the Canadian armed forces, and the Chairman of the Defence Research Board is responsible for the security of the Defence Research Board and its establishments.

247. Within the Canadian armed forces security is a responsibility of command at all levels. Security staffs provide advice to commanders, administer and direct the security forces and other security resources, and maintain liaison with civilian law enforcement agencies. The organization of security within each command varies to meet the different requirements of the commanders. In general, police matters and security measures are coordinated by a command staff officer.

248. At Canadian Forces Headquarters, a Director of Security is responsible to the Director General of Intelligence and Security for advice on the state of security within the Canadian armed forces. This responsibility includes the development of policy, procedures and regulations as well as advice to commanders arising from inspections and surveys, and the enforcement of relevant regulations. The functions of the Directorate of Security are grouped in three areas: security standards and procedures for the protection of information and the physical security of material and units; security clearance of personnel; and technical supervision of military police and security staffs employed at commands and bases. A special investigation unit carries out field investigations of personnel in the Canadian forces and the Administrative Branch of the Department, and also conducts criminal investigations at the request of any Commanding Officer. The investigators employed for personnel clearances are of corporal rank or above and are selected for this work only after having obtained some investigative experience in the military police and security fields. Training in field investigation is mainly done "on the job".

249. We have a number of comments on these procedures. First, the security organization in the Canadian armed forces constitutes a second security investigation agency. Ideally we believe there should be but one such agency. We understand however that in general investigations by the armed forces are concerned primarily with character weaknesses, and that cases in which subversive aspects come to notice are immediately turned over to the RCMP. We also appreciate the requirements for the armed forces to provide a career in security investigation for uniformed personnel

and to maintain its competence in this field, so that trained personnel may be available for use in theatres of operations. On balance we think there is a case for the armed forces to continue to conduct field investigations, with certain limitations.

250. The first limitation we suggest is that the armed forces agency should be responsible for the investigation only of uniformed personnel and potential recruits to the forces. At present, Defence Research Board civilian personnel are investigated by the RCMP, while civilian members of the Administration Branch of the Department and civilians employed by the Canadian forces are investigated by the armed forces. We have already suggested that the field investigation of civilian public servants should be removed from the police context and the functions reallocated to a branch of a civilian security service. If this is done, we think that the investigation of all civilians (including those employed by the Department of National Defence and the armed forces) should be conducted by the civilian security service.

251. The second limitation relates to standards. There have in the past been significant differences in the standards of investigations performed by the RCMP and the armed forces. As we have said many times, we think it important in the interests of individuals that the type of investigation, the calibre of the investigator, the nature of the reports and the criteria for judgment should be consistent. We have outlined our general views on standards of clearance in Chapter IV, and we think these standards should apply to all personnel—uniformed or civilian—of the Department of National Defence.

252. The Department of National Defence has expressed particular concern about the question of separatism as it affects members of the armed forces. We tend to share this concern. Quite apart from such practical considerations as immediate access to weapons, the concept of allegiance is important to the armed forces, and it would clearly be unwise to recruit personnel whose loyalty is at present confused or divided or who may in the future come to owe allegiance to a separate state. We realize that this argument cannot be carried too far; many individuals—including many with clearances—change their allegiances and citizenships in the course of their lifetimes. Nevertheless it is clear that the Department and especially the armed forces can justify a special interest in the separatist activities of members or potential recruits. We think that the same standards should be applied to civilian members of the Department as we suggest in Chapter IV should be applied to other government employees. As far as the uniformed personnel are concerned, we think there should be a clear statement of government policy that persons currently engaged in separatist activities will not be permitted to join the armed forces, and will be released if they are found to be members of the armed forces.

Release of Information

253. A further problem is concerned with the exchange of information with other countries. At present questions concerned with the release of classified defence information are dealt with by an official committee of the Department of National Defence, the meetings of which are attended by officials of other Departments when necessary. We suggest that the formulation and coordination of national disclosure policy should become a function of the Security Secretariat, advised as necessary by departments. The major part played by the Departments of National Defence and External Affairs in these matters would of course continue, but the central role would be performed on an extra-departmental basis.

254. In addition, there exists a number of problems concerned with the flow of unclassified information (particularly scientific or technological publications and information) between Canadian Government departments and officials and the communist countries. (It should be noted that the transmission or sale abroad of even unclassified publications is strictly controlled by communist governments; similarly, there is no doubt that the presentations and comments of communist individuals or delegations at scientific or other conferences or meetings are also examined and controlled.) At present individual departments, many of which are not aware of or primarily interested in security considerations, are responsible for exchange programmes, subject to certain general instructions. We believe that in practice the present system is inconsistent and possibly dangerous. We think that an effective form of centralized coordination must be established, and consider that this should also be a function of the Security Secretariat, advised as necessary by departments. Departments should be instructed to consult with the Security Secretariat before entering into specific or general arrangements for the exchange of unclassified information with communist countries, and the Secretariat should approve or disapprove proposals, subject of course to appeal by departments to higher levels.

IX. INDUSTRIAL SECURITY

General Considerations

255. We define industrial security procedures as those concerned with the protection of information and material relating to classified industrial contracts placed with Canadian industry by the Canadian Government or by allied governments. We have not considered the safe-guarding of information which is not government-owned and thus, for example, the problems posed by industrial espionage in the private sector or the theft of trade secrets by competitors, although such activities can obviously affect Canadian economic interests, especially if they are conducted by or on behalf of a foreign firm.

256. There are three reasons why a Canadian industrial security system is necessary. In the first place, the Canadian Government has some secrets of its own to protect; it would for example be highly detrimental to Canadian national interests and Canadian defence posture if all the details of Canadian defence research, development and production contracts were available at will to potential enemies. Secondly, there is no doubt that a reasonable standard of government-controlled industrial security is an important factor in Canada's economic well-being. Suspicion of industrial security standards can have a generally adverse effect upon industry and trade, for the flow of contracts and the interchange of information will tend to be restricted if allied powers suspect that their secrets may pass to potential enemies or their technology to competitors. Thirdly and more specifically, Canada receives a great deal of allied classified information and undertakes classified contracts for its allies. Quite apart from any moral obligations, the Canadian Government is a party to a number of agreements by which it is required to ensure that industry provides this allied information with protection essentially similar to that which it would receive in its country of origin.

Present Organization

257. During World War II, industrial security in Canada was a responsibility of the civil Department of Munitions and Supply. At the end of the war the responsibility was transferred to the armed forces, but in 1949 the Chiefs of Staff asked to relieved of the task. Responsibility was then transfered first to the Canadian Commercial Corporation and finally in 1951 to

the Department of Defence Production. A Director of Industrial Security, responsible to the Deputy Minister, was appointed to head an Industrial Security Branch within this Department. The Branch dealt with all security matters, both within the Department and in industry, and was responsible for the negotiation of international security agreements; later, the Director of Industrial Security came to assume responsibility for security within the Department of Industry as well as within the Department of Defence Production. In 1966 the Department of Defence Production was reorganized and the status of the Industrial Security Branch reduced to that of a Division within the Contracts Administration Branch. The Head of the Industrial Security Division is now responsible to the Director of Contracts Administration who reports through the Director General (Contracts) and the Assistant Deputy Minister (Purchasing) to the Deputy Minister of Defence Production. The Head of the Industrial Security Division has a direct channel to the Deputy Minister in order to deal with sensitive matters concerning personnel security within the Department; more recently a direct channel has been re-established for matters relating to security in industry.

258. The duties of the Industrial Security Division are very broad in scope; they include provision of advice on security matters to the Departments of Defence Production and Industry, associated agencies and Crown companies; administrative arrangements for, and decision-making on, personnel clearances of departmental employees and employees in industry (but not personnel investigation, which is the responsibility of the RCMP); physical security of departmental premises; advice on the classification and security requirements of contracts; clearances and inspections of industrial plants and facilities; control of classified documents held in the departments and released to industry; implementation and monitoring of international agreements and regulations on industrial security. The latter include agreements and procedures resulting from the production-sharing arrangements between Canada and the United States (the United States-Canada Industrial Security Agreement of 1952 and a later agreement on the exchange of classified information), similar agreements within the framework of the North Atlantic Treaty Organization, and a series of bilateral and multilateral agreements (some on specific programmes) with allied countries. Regulations and procedures have in fact already been established to cover most eventualities relating to industrial security, and precedents have been created for the negotiation and content of any relevant international agreements. The continuing tasks are largely concerned with the implementation of appropriate procedures relating to personnel clearance, contract security, document classification and control, and facility inspection and clearance, and with the detailed implementation and monitoring of international regulations, especially those relating to exchanges of visits and classified information between Canadian and United States industry.

259. The Department of Defence Production's security staff is very small. Apart from the staff at headquarters in Ottawa, small field offices are

maintained in Montreal and Toronto, each consisting of an officer and a secretary. These field offices are responsible, under the direction of the Industrial Security Branch, for the inspection and general supervision of the security of industrial plants across Canada, for liaison with these companies and for the provision of advice to their managements and security officers, for a number of administrative functions relating to the transmission of documents and exchanges of visits and for the investigation of specific incidents. The territory covered by the Montreal office extends from the East Coast to Belleville, Ontario, while the territory of the Toronto office extends from Belleville to British Columbia.

260. The bulk of the plants at present engaged on classified contracts is located in Ontario and Quebec, but the others are spread from Newfoundland to British Columbia. In addition some executives, and in many cases the physical facilities, of additional firms are cleared so that they may receive classified information in order to maintain their expertise and bid on classified contracts. A large part of the detailed responsibility for industrial security is assumed by the firms themselves. If they have access to classified information they are required to nominate security officers, and most large firms maintain such officers on a full time basis; small firms nominate a staff member for part-time security duties.

Shortcomings and Options

261. As always in the field of security, it is a matter of great difficulty to arrive at a reasonable judgment of the effectiveness of present procedures. However, on the basis of such inquiries as we have been able to make, it would appear to us that some improvements could be made in the present standards of industrial security in Canada.

262. We believe that industrial security is an activity in which government and industry are necessarily interdependent. In spite of provisions in contracts, enforcement by sanction is in practice difficult even if it were desirable, and reasonable security can only be achieved by cooperation. We have therefore been disturbed by the somewhat antagonistic relationships which appeared to exist at one time between the industrial security authorities and at least some sections of industry. If industry is to cooperate willingly the industrial security authorities must either devise procedures which appear to industry to be efficient and practicable, or if this is not possible at least satisfy industry that any delays are necessary and inevitable. Failure to do either of these things could result in the most dangerous situation of all, in which industry is antagonistic to what may appear to be bureaucratic and incompetent procedures, and may take steps to evade the spirit, if not the letter, of security regulations.

263. In such circumstances, we would be especially worried about the arrangements for auditing the compliance of industrial firms with the regula-

tions and for general liaison with firms on security matters. Before classified information is released to an industrial plant, a physical inspection of the facility is conducted, and advice proffered on security requirements. As we have said, these inspections are conducted by the two field officers of the Department of Defence Production and are supposed to be repeated at intervals. In our opinion repeated facilities inspections should be regarded as of central importance to the industrial security programme; they represent not only an opportunity to consider a firm's physical environment but also a chance to examine the general posture and attitude of the company in terms of security precautions. If they are regular, these visits can also represent an important enforcement procedure, for the inspecting officer can ensure that suggestions made on previous visits have been carried out. It is quite clear to us that a reasonable inspection programme of the kind we have in mind cannot possibly be undertaken across the whole of Canada by two officers; certainly present inspections fail to meet reasonable standards of frequency and thoroughness.

264. In addition, the field offices of the Department represent the crucial point of day-to-day contact between industry and government for a wide variety of matters concerned with industrial security. Although some of these matters may in themselves be relatively trivial, nevertheless the apparent competence and responsiveness of the field offices will be noted by industry, and will have an effect upon industry's willingness to cooperate in an effective industrial security programme. Finally, the field offices should provide the continuity necessary for an effective security programme by advising and assisting newly-appointed company security officers. For all these reasons we think it of great importance that sufficient numbers of personnel of adequate calibre be made available to these offices.

265. It seems clear to us that for some years there has been a lack of understanding on the part of the management of the Department of Defence Production of the importance of the security function, and a lack of support for it. This has resulted in the present situation in which industrial security has too low a status in the departmental structure, and too low a priority in the competition for resources, and especially for sufficient staff of adequate calibre. We are aware that the Department is now making efforts to rectify this situation by seeking additional staff.

266. We have considered a number of possible structural changes which might be made in order to improve the present situation. One obvious option is to reallocate responsibility for industrial security to the Department of National Defence, so that, for example, the Canadian Forces Headquarters security organization becomes responsible for the security of armed forces contracts and the Defence Research Board responsible for the security of its own research and development contracts. This possibility seems to us worthy of detailed examination, and has in fact been urged in one form or another by a number of individuals in government and industry.

267. In the first place, there would appear to be advantages in avoiding the present situation in which a single department—Defence Production—has an unaudited responsibility both for the security of classified contracts, and for a variety of commercial functions the efficient exercise of which may reasonably be in conflict with the requirement for security. In addition, the involvement of two departments—National Defence and Defence Production—in issues in which security must be weighed against other factors would at least help to ensure that any conflict was formally resolved on an inter-departmental level. Further, nearly all classified contracts relate to defence matters, and a large part of the relevant classified information is made available to Canada through defence channels, and remains in a sense the responsibility of the Department of National Defence. It would seem likely that industrial security would generally be handled with more enthusiasm if it were a function of whichever department was primarily responsible for the classified material.

268. At the administrative level, the Canadian Forces and the Defence Research Board have establishments across the country, each with security officers and staffs who could probably be used to perform facilities inspections; at least they represent a framework within which an industrial security capability could be readily developed. A good deal of security expertise is available within these agencies, and security organizations exist in Canadian Forces Headquarters and Defence Research Board Headquarters which could probably be expanded at small extra cost to assume control of these additional tasks.

269. We acknowledge, however, that reallocation of responsibility from the Department of Defence Production to the Department of National Defence would raise a number of problems. Some classified contracts are negotiated directly and are not at present the direct concern of the Department of National Defence. Further, some of the most important industrial security tasks are carried out during the negotiating stage before a contract is awarded, and the separation of industrial security from the department responsible for the negotiations might raise questions of divided responsibility. We do not think such problems are insuperable. There seems to us to be a clear analogy between the engineering inspection and quality control functions now performed by the Department of National Defence for defence contracts and the general form of the industrial security role. We would not push the analogy too far, but we suggest that if problems of coordination can be solved in one area they can certainly be solved in the other.

270. It seems to us, therefore, that the balance of advantage lies in allocating the function to the Department of National Defence. However, if this suggestion is considered impracticable, the Department of Defence Production should continue to take steps to improve the present situation. First, sufficient numbers of personnel of suitable calibre, experience and maturity must be allocated to the task. Secondly, the industrial security

function must be given an appropriate status in the departmental organization. Thirdly, relations with industry must be strengthened, procedures must be improved and rationalized, and services provided more rapidly. Industrial security procedures and decisions must be subject to the same audit and enforcement by the Security Secretariat, advised where necessary by the Security Service, as are procedures in other areas.

Personnel Security in Industry

271. The criteria for Canadian industrial personnel clearance procedures are identical with those for the public service, but the procedures themselves are somewhat different. The security officer of each firm is made responsible for ensuring that, before being employed in a position requiring access to classified information, each person being considered for such employment provides sufficient data about himself by completing a Personal History Form, and for submitting the completed form to the Department of Defence Production. Fingerprints are not at present required from industrial workers. The Director of Industrial Security submits the form to the RCMP, which for Confidential or Secret clearances conducts a subversive records check but, in the absence of fingerprints, is unable to make an adequate check of criminal records. In those few cases where a Top Secret clearance is necessary the RCMP carries out a normal field investigation. On the basis of the information resulting from these inquiries, and of any other data that are available, the Department of Defence Production may grant the firm a security clearance in respect of the employee or prospective employee. The procedures that are followed when adverse reports are received, and doubts cannot be resolved, are similar to those that are followed in the case of government employees.

272. We have already outlined our views on these procedures in Chapter IV. As far as possible, we would apply to industrial workers the same procedures as are applied to government employees. Data should be acquired about industrial workers as for all other persons who are required to have access to classified information; certainly industrial workers should be required to provide fingerprints. Records should be checked and, when necessary, inquiries made by the Security Service: the formality of the decision process should be that the Security Service makes a recommendation, and the responsible department takes the decision to grant or withhold clearance.

273. Similarly we think that review procedures should be identical with those available to government employees. An applicant for industrial employment who is refused employment on security grounds should not be told why and should have no right to apply for the decision to be reviewed. On the other hand an individual who already has access should be informed of the grounds for withdrawal of access to the extent possible without

jeopardizing security, and told of his right to ask for a review of the Department's decision by the Security Review Board. Similarly, an individual who is employed by a firm on a permanent basis, and whose career is significantly inhibited because security considerations have led to the refusal of a transfer or promotion should be told the reason and of his right of review.

274. In practice, the question of the review of decisions has not been a particularly live issue as far as industrial workers are concerned. The main problem in this area seems to have arisen from the inordinate length of time it sometimes takes to obtain even a minimal clearance when no trace of any kind appears in the records. Classified contracts often require the services of skilled and scarce workers. It is seldom economically possible for a company to hire workers unless they can be put to work on a current contract within a short time, and delays in obtaining a clearance are said frequently to deny a company the services of a potential recruit. We have been unable to establish in detail where delays occur, but we believe it of considerable importance to ensure that clearances are available within a reasonable time, at least in the vast majority of cases where no adverse trace exists in any records. We think that as many steps as possible should be taken to speed up present procedures. A wide variety of arrangements are available for this purpose, including adequate and competent staffs, a simplified Personal History Form, direct transmission of the form from the company to the Security Service (with a copy to the responsible Department), and special procedures to meet the convenience of industry when very rapid replies are essential for one reason or another. Eventually the automation of subversive and criminal records will help to improve the situation.

Training of Company Security Officers

275. As we have indicated, responsibility for certain aspects of industrial security procedures is assumed by the firms themselves, through the company security officers. These officers are central to the efficient operation of the system. As a result, although they are company employees and owe their first allegiance to the company which employs them, the government has a justifiable interest in their calibre and efficiency. At present these qualities vary widely; some company security offiers are aware and competent, but some are clearly untrained and ineffective.

276. We think that the selection and training of company security officers is a matter of importance, in which the government should involve itself. Regular training courses should be run either by the Security Service or by the responsible Department with the assistance of the Security Service, and as a general rule no company security officer should be "recognized" by the government until he has successfully completed such a course or has acquired equivalent experience. What is more, employment of a "recognized" security

officer by a firm should as a general rule be a condition of any classified contract. We realize that small firms, including some consultants, may have some difficulty in meeting these requirements, and we do not rule out the possibility of special briefings for the executives of such firms, or other special arrangements to meet their convenience. In principle, however, we think it important that the officer who is designated as responsible for security in a company which has access to classified material should receive appropriate training.

277. In addition, we think that a great deal more could be done to increase awareness of the importance of security amongst executives of firms engaged, or likely to be engaged, in classified contracts. Other countries have considerable educational programmes for this purpose, including conferences for executives and lectures for staff. Measures of these kinds are needed in Canada.

Documents, Visits and Classification

278. There are three detailed areas which seem to be causes of particular annoyance to some sections of Canadian industry. The first arises from the fact that, under the provisions of the United States-Canada Agreement, classified documents must only pass across the border in the course of transit from one government to another, and arrangements for visits between firms or by employees of firms to government establishments to discuss classified matters must also be arranged between governments. The second concerns certain present regulations for the handling and destruction of classified documents. The third relates to the classification of contracts or parts of contracts.

279. We are told that delays of up to six months can occur when a Canadian firm requests a classified document from a United States industrial or research establishment, and that these delays can sometimes be of considerable significance to a company's operation. In addition, delays of three months can occur between the submission of a request to visit an establishment across the border and the receipt of authority.

280. We can see no objection to the rules themselves. Classified documents are government property, and should only pass between governments. Permission should be sought from the appropriate authorities when non-government employees wish to discuss classified matters outside their immediate environments. We find it somewhat difficult to judge the exact relevance of the criticisms we have heard—clearly there will be some document requests that governments will wish to consider in detail over a period; there may well be some requests to which they will not accede at all. Similarly, there will be some occasions when one government or another will wish to give extended consideration to the desirability of a particular visit. In general, however, it seems to us that bureaucratic processes and inertia on both

sides are responsible for a good deal of the delay, and obviously arrangements must be made which will meet the justifiable industrial requirement for reasonable expedition. There exists a whole range of possibilities, including the provision of adequate staffs to deal with requests with reasonable speed, authorization for direct exchanges between named persons of documents related to a specific project (subject to the government authorities being informed), blanket authorization for exchanges of visits between designated persons on designated subjects, the use of specified company security officers as government agents for the making of arrangements, and so on. We are told that steps are being taken to improve procedures and we hope that these will continue.

281. With regard to the handling and control of documents it has been pointed out that the regulations laid down by the Department of Defence Production for industry are more stringent than the regulations in government departments. To some extent this is a matter of interpretation. For instance, the Industrial Security Manual requires that a contractor shall keep a record of all classified material or information received, distributed, originated, reproduced or destroyed. Certainly if this regulation is interpreted by the firm to mean that every classified working note made by an employee shall be registered, and that a signature shall be obtained whenever a document is passed across an office, the implementation of the regulation must be time-consuming and onerous. On the other hand, it is certainly appropriate that the government should be able to require production of any classified information it has supplied to a firm, and to seek reasonable assurance that classified documents created by the firm are accounted for with some precision.

282. Similarly it appears that some firms are faced with problems caused by the growing numbers of classified documents they hold. In fact, the regulations stipulate that any firm may destroy any classified document it has itself created, but that the firm must seek permission for the destruction of government-owned documents. If a firm does not wish to go through the procedure of seeking permission for the destruction of government-owned documents, it may return them to the Department of Defence Production. As far as declassification is concerned, we think it right that companies should be required to seek permission from the government, but given adequate staffs we can see no reason why special arrangements cannot be made to meet extreme cases. Officials of the Department could, for example, spend periods with companies to assist with the sorting and declassification of documents when a problem of long standing exists.

283. Generally, it is quite clear that the formulation and application of the security regulations could be improved and rationalized, and we can see no reason why this process of rationalization should not be carried out in consultation with industry. The basic principle must be preserved that classified information remains the property of the government and cannot be the

property of an individual or a firm, but there is obviously room for a good deal of negotiation on the details of the rules and for more imaginative interpretation and implementation.

284. The proper classification of the various aspects of a classified contract is of considerable importance to the effective operation of the industrial security system, for overclassification or unnecessary classification can place a considerable burden on industry. The originator of the contract—in Canada usually the Department of National Defence—prepares a document known as a Security Requirements Check List which sets out the security classifications to be applied to various aspects of the project; this is likely to be a matter of considerable complexity if the contract is of any size. These check lists are passed to the Department of Defence Production and to industry when the contract is awarded. We believe that more formality should enter into the classification process. The full implications of the classifications allotted to various aspects of a project should be considered in greater detail by the contract originator and the security authorities, in consultation with the contractor. The need for classification should be balanced against the cost and effort required to implement the necessary procedures. The need to declassify specific aspects of a contract as the contract proceeds should also be considered.

X. SOURCES AND TECHNIQUES

285. All security activities depend upon information. The adequacy of appreciations and judgments can be no better than the information available. Without accurate and full information, the perception of the threat by the security authorities, and thus by the government whom they advise, will be less than satisfactory. Unimportant threats may be overemphasized, significant threats may be overlooked, and vital counter-measures may not be taken.

286. Similarly, in the area of security clearance, it is in the interests of both the state and of individuals that information should be accurate and complete. Inadequate records can mean that poor reports are sent to departments and unreasonable judgments made. Persons may unjustifiably be refused access to classified information, or unworthy persons may be given access.

287. Most of this is true of any activity that involves choices or decisions: it is important that adequate information should be available. What is different about the area of security is that those who possess the information often take steps to conceal it, or to prevent its acquisition by the security authorities. This means that the security authorities must often take special steps to obtain it. The remainder of this chapter is concerned with some of these steps and the issues that arise from them. We do not consider the obvious and casual sources who provide information in the course of the clearance process, such as referees, employers or neighbours, nor do we deal with such sources as open publications and liaison with friendly agencies. We are more particularly concerned with sources that directly or indirectly provide data on espionage or subversive organizations and operations.

288. Human agents are one of the traditional sources of intelligence and security information, and any security service is to a large extent dependent upon its network of agents, on the scale of their penetration of or access to useful targets and on their reliability. Operations involving human sources require the most sophisticated handling by trained men with wide experience. Nevertheless, in spite of the difficulties associated with some of these operations, we regard them as essential to an effective security posture. We would

go further, and suggest that it is impossible fully to comprehend or contain the current threats to security—especially in the field of espionage—without active operations devoted to the acquisition of human sources.

289. Surveillance programmes are of some importance in maintaining contact with the activities of known or suspected subversive individuals or foreign intelligence officers. It should be noted, however, that members of communist missions in Canada have considerably more freedom to travel than have Canadian and other western diplomats in communist countries. This freedom naturally leads to increasing pressure on available resources.

290. In recent years the general question of the use of technical sources has caused concern in democratic countries in case it should constitute an invasion of privacy. In Canada the Criminal Code does not explicitly declare wiretapping or eavesdropping to be crimes, although it is possible that in certain circumstances they could constitute the indictable offence of mischief. In addition, it can be argued that sections of some Telephone Company Acts or the General Regulations of the Board of Transport Commissioners, in combination with sections 107 and 108 of the Criminal Code, could provide a basis for prosecution related to telephone interception.

291. Our views on this subject are simple. We are not required by our terms of reference to consider the propriety of telephone tapping or eavesdropping by private persons, or even by the police for criminal investigation purposes. In the security context, however, we see no reason to differ from the conclusions of the British Committee of Privy Councillors which examined this general subject in 1957. This Committee concluded that espionage and subversive activities are carried out by highly trained persons who take extreme precautions, that the weakest link in this highly skilled chain of espionage and subversion is communication between agents, and that methods of interception are very effective, and indeed are often the only effective means of countering espionage and subversion and of safeguarding the secrets of the state.

292. There appears to be a possibility that legislation may be proposed to control the interception of telephone conversations and electronic eavesdropping. We think it important that any such legislation should contain a clause or clauses exempting interception operations for security purposes from the provisions of the statute. We think it reasonable however that arrangements should exist for the control of such operations. In the case of telephone interception, we think this control should be ministerial rather than judicial, since ministers are more readily aware of the full details of the cases brought to their attention, are in better position to understand the special requirements of security, and could maintain more centralized control of the complete range of wiretapping operations.

293. Eavesdropping, however, presents a rather different problem. The practice is particularly distasteful to the common conscience, and we think

that it should only be undertaken when it appears to be an indispensable source in connection with a specific operation. We believe that eavesdropping operations should be authorized personally and individually by the Head of the Security Service, and that he, rather than the minister to whom he reports, should bear full responsibility for all such operations.

294. The question of the interception of mail for security purposes also deserves consideration. In Canada, mail may be withheld by the Postmaster General if he suspects that any person is by means of the mails attempting to commit an offence, or aiding or procuring any other person to commit an offence, but it may not be opened in any circumstances except with the consent of the person under suspicion and then only by a specially appointed Board of Review. These rules are known to the public from the Post Office Act (R.S.C. 1952, c. 212) and seem to us to provide an open invitation to hostile agents to make use of the mails for their secure communications. We believe that arrangements should be made (possibly in the course of amendment of the Official Secrets Act) to permit the examination of the mail of persons suspected by the security authorities on reasonable grounds to be engaged in activities dangerous to the security of the state. However, any such examination should also be strictly controlled, and should require ministerial authorization in each instance.

XI. RECOMMENDATIONS

295. We have not attempted to summarize our Report. Instead we state briefly below our more important recommendations. The supporting arguments for these recommendations will be found in the body of our Report, as will a number of our relatively less important suggestions. Numbers in parentheses refer to paragraphs in the text.

Organization for Security

296. We Recommend that there should be established in the Privy Council Office a formalized Security Secretariat with adequate status, resources and staff to formulate security policy and procedures in the context of general governmental policies, and more importantly, with effective authority to supervise the implementation of government security policies and regulations and to ensure their consistent application. This Secretariat should be analogous as an organizational entity to the present Secretariats on Science and on Bilingualism. It should be headed by a Director responsible to the Secretary to the Cabinet, and should maintain close links and be advised by the Security Service. (49)

297. We Recommend the establishment of a new civilian non-police agency to perform the functions of a Security Service in Canada. This agency should eventually be quite separate from the RCMP; it should be generally without law enforcement powers, although it should, when necessary, operate in close liaison and cooperation with the RCMP and other police forces. The organizational and operational detachment of the Directorate of Security and Intelligence from the RCMP may be a necessary first stage in the process of devlopment of the new agency. We also Recommend that: (58,63)

(a) The duties of the Security Service should include the following tasks, and its terms of reference should be made public:

(i) to collect, collate and evaluate information or intelligence concerning espionage and subversion, and to communicate such information in such manner and to such persons as the Head of the Service considers to be in the public interest;

(ii) to be responsible for the direction, coordination and implementation of counter-espionage and counter-subversive operations in Canada;

(iii) to be responsible for security investigations concerning civilian personnel employed by the Government of Canada, and other persons as required;

(iv) to be responsible for the inspection of security precautions in departments throughout the Government of Canada and elsewhere as required, and for the provision of training and advice for departments of government and other agencies on matters concerned with security;

(v) to be responsible for the operation and coordination of all technical security measures;

(vi) to cooperate and liaise as may be necessary with domestic, Commonwealth and foreign police forces and security services. (63)

(b) The Service should be responsible to a designated minister, but the Head should have the right of direct access to the Prime Minister. The Head should also have a certain degree of independence of the government of the day. (63,64)

(c) The Head of the Security Service should present periodic reports for the consideration of the Security Review Board (see paragraph 299(d) below) and the Board should have authority to draw to the attention of the Prime Minister any matters it considers appropriate. (66)

Personnel Security

298. We Recommend that the following steps be taken with regard to the Canadian security screening programme:

(a) Before a person is employed in the public service, whether or not he is likely to have access to classified material, his name should be checked against the subversive records and he should be the subject of a fingerprint check against criminal records. Adverse information need not result in rejection, but the information should be made available to the employing department, which can request further inquiries if they appear to be necessary. (89,90)

(b) All persons without exception should undergo appropriate security screening procedures before they have access to classified information or material. (78)

(c) Standards of clearance for access to classified material should be as follows:

(i) before a person is given access to Secret or Confidential information he should be the subject of comprehensive records checks

(including subversive records, criminal records, all relevant federal departmental records, credit bureaux records and foreign records where necessary and possible). Where written inquiries to referees or previous employers have not been made as part of a personnel selection process, this should be done. If these steps produce no adverse information, access may be granted to Secret or Confidential information after a formal and recorded departmental judgment that this access is necessary and desirable. If however any significant adverse information is developed, further investigation (including field inquiries) should be undertaken by the Security Service to confirm or resolve doubts. After inquiry, the case should be referred by the Security Service, with a recommendation, to the employing department for decision;

(ii) before a person is given access to Top Secret information he must be the subject of a similar comprehensive records check and a full field investigation covering a period of at least the previous ten years of his life or the period from age eighteen, whichever is shorter, and a formal and recorded departmental judgment must be made that this access is necessary and desirable.

(iii) clearances to Secret and Top Secret levels should be formally up-dated at regular intervals, Secret clearances by means of records checks and consultation with departmental supervisors, and Top Secret clearances by means of further field investigations. Security clearances should not be thought of as permanent and in between these up-datings supervisors of personnel handling classified matters and departmental security officers should concern themselves, if necessary in consultation with the Security Secretariat and the Security Service, with cases in which possible doubts have come to notice; (90)

(d) Departments and agencies should remain responsible for granting clearance, but the Security Service should assist by providing information on individual cases as fully as possible, rather than in the form of abbreviated reports. In addition, the Security Service should comment on the validity, relevance and importance of the information it provides and make a formal recommendation on whether or not clearance should be granted. (92,94)

(e) When a department decides to grant a security clearance contrary to the recommendation of the Security Service, the latter should be informed, and should be able to bring the department's decision to the attention of the Security Secretariat. In addition, the Security Secretariat should itself review departmental security decisions in order to ensure consistency. (105)

(f) Persons in the following categories should not be permitted to enter a position in the public service where they may have access to classified information or are likely to have opportunities to gain such access:

(i) a person who is a member of a communist or fascist party or an organization affiliated with a communist or fascist party and having a similar nature and purpose;

(ii) a person who by his words or his actions shows himself to support a communist or fascist party or an organization affiliated with a communist or fascist party and having a similar nature and purpose;

(iii) a person who, having reasonable grounds to understand its true nature and purpose, is a member of or supports by his words or his actions an organization which has as its real objective the furtherance of communist or fascist aims and policies (commonly known as a front group);

(iv) a person who is a secret agent of or an informer for a foreign power, or who deliberately assists any such agent or informer;

(v) a person who by his words or his actions shows himself to support any organization which publicly or privately advocates or practices the use of force to alter the form of government. (97)

(g) Persons in the following additional categories should not be permitted to have access to classified information unless after consideration of the circumstances the risk appears to be justified:

(i) a person who is unreliable, not because he is disloyal, but because of features of his character which may lead to indiscretion or dishonesty, or make him vulnerable to blackmail or coercion. Such features may be greed, debt, illicit sexual behaviour, drunkenness, drug addiction, mental imbalance or such other aspect of character as might seriously affect his reliability;

(ii) a person who, through family or other close continuing relationship with persons described in sub-paragraph (f) above, is likely to be induced, either knowingly or unknowingly, to act in a manner prejudicial to the safety and interest of Canada; it is not the kind of relationship, whether by blood, marriage or friendship, which is of primary concern, but the degree of and the circumstances surrounding the relationship, and most particularly the degree of influence that might be exerted, which should dictate a judgment as to reliability;

(iii) a person who, though in no sense disloyal or unreliable, is bound by close ties of blood or affection to persons living within the

borders of such foreign nations as may cause him to be subjected to intolerable pressures. (98)

(h) Homosexuality should not always be a bar to employment in the public service, but should normally preclude clearance to the higher levels of classification and certainly preclude posting to sensitive positions overseas. (100)

(i) Security policy concerning separatism should be made clear; the federal government should take (and be seen to take) steps to prevent its infiltration by persons who are clearly committed to the dissolution of Canada, or who are involved with elements of the separatist movement in which seditious activity or foreign involvement are factors; information concerning membership in or associations with extreme separatist groups should be reported on the same basis as information concerning other allegedly subversive movements, and the departmental decision process should be similar. (101)

(j) Universities should not be immune from the same kind of inquiries as any other institutions or previous employers. However, these inquiries in particular should be conducted by mature, experienced and sophisticated investigators who should take great care not to conduct random inquiries concerning student activities, or to interfere with freedom of thought and discussion. (102,103)

(k) Definite rules should be established concerning the clearance of aliens or former aliens. In general, clearance should only be granted to such individuals when it is possible to obtain adequate data on which to base a judgment. (104)

(l) Fingerprints should be taken from all persons requiring clearance, including industrial workers. (91)

(m) Full criminal records should remain available for purposes of security clearance, whatever the decision about "vacating" such records in other contexts. (91)

Review Procedures

299. We Recommend that a Security Review Board be established, consisting of a Chairman and (say) two other members, all nominated by the Governor in Council, but independent of any government department or agency. The members of the Board should not be active government officials, although they would undergo normal security clearance procedures, and their secretarial support would be provided by the Security Secretariat. We also Recommend that: (114,117)

(a) The Board should consider protests by public servants, members of the armed forces or industrial workers against dismissal or transfer or against any denial of promotion or apparent inhibition of career prospects on security grounds; protests by such persons as consultants

or university faculty members where withdrawals of clearance affect professional careers; protests by sponsors or nominators against refusal on security grounds to admit or grant landed immigrant status to those they have sponsored or nominated; and protests by applicants for citizenship who have been refused on security grounds. (114)

(b) The Board should proceed on the following lines: an individual entitled to appeal to the Board should be provided with a document indicating as far as possible the reasons for the adverse decision; the Board should interview separately and privately representatives of the Security Service and of the department concerned, the person concerned (accompanied by a friend, lawyer or trade union official if he wishes) and any other individuals whom the persons wishes to be heard; the Board may interview these persons as many times as it wishes, and may also order further inquiries; the Board's advice, recommendations, or comments should be communicated to the Governor in Council and the minister concerned; a brief record of the Board's decision should also be communicated to the individual concerned; when the advice of the Board has been received, any further action on the case should be considered by the Prime Minister in the light of this advice. (117)

(c) In connection with dismissals, the Board should provide the form of hearing required by section 7(7) of the 1967 amendments to the Financial Administration Act. (S.C. 1966-67, c. 74) (114)

(d) In addition, the Board should receive periodic reports from the Head of the Security Service (see paragraph 297 (c) above) and should have authority to draw to the attention of the Prime Minister any matters it considers appropriate. (66)

Immigration

300. We Recommend that the following changes be made in the procedures for the security screening of immigrants:

(a) Wherever possible, data should be acquired about the criminal and security records of all prospective immigrants to Canada irrespective of relationship, sponsorship, or country of origin. (131)

(b) Significantly adverse security reports on an adult immigrant should lead to rejection, as should significantly adverse reports on a sponsor or nominator in those cases where data on the immigrant himself is not available. (132)

(c) Normally, decisions on individual cases should be made in the field by the concerned officials. (134)

(d) All cases of rejection of sponsored dependants or nominated relatives, and all cases where the officials in the field are uncertain about the

admission or rejection of any applicant on security grounds, should be reviewed jointly in Ottawa by the Department of Manpower and Immigration and the Security Service, and, at the option of either, the Security Secretariat. Elements of leniency arising from relationships or humanitarian considerations will thus be introduced into the decision process in Ottawa during interdepartmental consultation. (135)

(e) Guidelines should be introduced to take the place of the present rejection criteria and to assist officials in the field in making their judgments. The following is a draft set of guidelines which relate only to security, and are not intended to affect judgments of acceptability in other contexts. These guidelines should be interpreted with mature judgment by the officials on the spot, according to their understanding of local conditions, and without regard to elements of leniency arising from relationships or other considerations. Similar guidelines should be used in Ottawa in making judgments about sponsors or nominators on those occasions when no direct check of the applicant has been possible, and about applicants already in Canada. In general, persons in the following classes should be rejected:

(i) persons who are believed on reasonable grounds to have held at any time an official position in a communist, neo-Nazi, neo-Fascist or other subversive or revolutionary organization, or to have held a government, party, public or other senior position or appointment known to be given only to reliable members of such an organization;

(ii) persons who are believed on reasonable grounds to have held membership within the past ten years in a communist, neo-Nazi, neo-Fascist or other subversive or revolutionary organization, unless the applicant can demonstrate that membership was for trivial, practical, non-ideological or other acceptable reasons;

(iii) persons who are suspected on reasonable grounds to be or to have been at any time agents on behalf of a communist, neo-Nazi, neo-Fascist or other subversive or revolutionary organization, or to have taken part in sabotage or other clandestine activities or agitation on behalf of such an organization;

(iv) persons who for unexplained reasons engage in significant misrepresentation or untruthfulness in completing documents for immigration purposes or during interviews. (137)

(f) Independent applicants for immigration should normally not be accepted from communist-bloc countries, unless they have first established sufficient residence in a country where a meaningful security check can be made; where the prospective immigrant has a sponsor or nominator, a security screening of the latter should be carried out, and the potential immigrant rejected if the reports are

significantly adverse, unless humanitarian considerations are overriding. (138)

(g) Procedures for admitting Chinese immigrants from Hong Kong should be extensively revised as a matter of urgency. Some years residence in Hong Kong itself or in an area where a meaningful security check is possible should be mandatory. (139)

(h) The requirement to provide fingerprints should be levied on all prospective immigrants, both to confirm identity as well as to facilitate criminal records checks. (140)

(i) Persons who have already been formally admitted as landed immigrants should not be subject to deportation on security grounds without full judicial appeal before a body such as the Immigration Appeal Board. (116, 142)

(*j*) Sponsors or nominators whose dependants or relatives have been refused admission or refused landed immigrant status should have access to the Security Review Board (see paragraph 299 above). (143)

(*k*) Applicants for landed immigrant status who are already in Canada should be treated in the same way as if they had applied abroad, and should have no entitlement to an appeal against rejection on security grounds; their sponsors or nominators (if any) should however have the right to appeal rejections on security grounds to the proposed Security Review Board (but not to the Immigration Appeal Board). (141)

Citizenship

301. We Recommend that the grant of citizenship should normally be refused on security grounds only if actual illegalities or criminal acts have been committed and proved in court, and not merely for membership in subversive associations or even the Communist Party. However, We Recommend that ministerial discretion should be retained to deal with certain cases in which it may remain appropriate to withhold citizenship for particularly significant security reasons. All persons whose applications are rejected on security grounds should have access to the Security Review Board. (155, 156)

Passports

302. We Recommend that:

(*a*) All applicants for a passport who claim to have been born in Canada should be required to produce a birth certificate or some other acceptable proof of birth; all applicants claiming to be naturalized citizens should continue to be required to produce their citizenship certificates. (163)

(*b*) All applicants should normally be required to appear personally before an appropriate official. This will require a further decentralization of facilities for the issuance of passports. (163, 164)

(*c*) In the cases of persons who lose more than one passport or where there is reason to suspect that the "loss" may have been intentional, the issuance of a further passport should be delayed until the validity of the original has expired, subject to arrangements for truly urgent cases. (166)

Departmental Security

303. We Recommend that:

All Departments and Agencies

(*a*) The general policy of departmental responsibility should continue, but:

(i) each department should create an effective security organization headed by a trained security officer at a sufficiently senior level in its own structure;

(ii) each department should prepare departmental security regulations, based on the regulations issued by the Security Secretariat, but responsive to departmental requirements;

(iii) training for departmental security staff and for other selected senior officers should be provided by the Security Service; in addition, security education should be provided within departments on a continuing basis;

(iv) arrangements should be made for expert security advice to be given to departments, including if necessary the secondment of officers from the Security Service to departments for periods of time.

(*b*) Inspection and audit of departmental security measures should be carried out by a protective security branch of the Security Service, and arrangements should be made for appropriate action to be taken where departmental procedures are inadequate.

(*c*) As a matter of urgency, the RCMP and the Privy Council Office (or the new Security Secretariat we have proposed) should, after re-examination of present security regulations and consultation with departments, prepare new security regulations for promulgation by the government. When this is done, departments should be allowed a specified period in which to create adequate and effective security staffs and structures and to make preliminary efforts at compliance. On completion of this period their efforts should be audited, and cases in which the security posture of departments is unsatisfactory should be brought to the attention of their deputy ministers or ministers.

(*d*) After this preliminary period, a continuing effort should be made to ensure that compliance with security regulations continues to reach reasonable standards. Cases in which the security posture of a department is unsatisfactory should be brought to the attention of deputy ministers and ministers by the RCMP or the Security Secretariat. (68-75, 183, 184)

Department of External Affairs

(*e*) Consideration should be given to the establishment of a separate Security Division in the Department of External Affairs. (237)

(*f*) It should be made clear that the head of each Canadian mission abroad is responsible for the security of all Canadian Government personnel and offices located in the country to which he is accredited, and that the post security officer acts on his behalf. (238, 239)

(*g*) The function of post security officer should generally be the primary responsibility of a trained officer of adequate seniority. (240, 241)

(*h*) Greater attention should be paid to the problem of providing reasonable standards of physical security at missions abroad. (242)

Department of National Defence

(*i*) The armed forces security investigation service should be responsible for the investigation only of uniformed personnel or potential recruits to the forces, and its standards of investigation should be consistent with those which the Security Service applies to civilians. (250, 251)

(*j*) Persons currently engaged in separatist activities should not be permitted to join the armed forces, and should be released if they are found to be members of the armed forces. (252)

Industrial Security

304. We Recommend that the industrial security function be removed from the Department of Defence Production, and reallocated to the Department of National Defence. Whether or not this recommendation is accepted, we feel that the following steps should be taken: (270)

(a) The industrial security function should be recognized as important, and sufficient numbers of staff of adequate calibre should be allocated to it. In particular, the industrial security field offices should have increased numbers of personnel, in order to provide adequate standards of facility inspection, advice and audit. (263, 264, 270)

(b) The general standard of cooperation between the government industrial security authorities and individual companies should be improved. (262)

(c) Clearance procedures for industrial workers should generally be the same as those applied to government employees, and should include

fingerprint checks. Review procedures for industrial workers should also be identical with those available to government employees. (272)

(d) Steps should be taken to reduce the delays that now occur in obtaining clearances for industrial workers. (274)

(e) The government should concern itself with the calibre, efficiency and training of company security officers, and should not "recognize" such officers until they meet standards acceptable to the government. Employment of a "recognized" company security officer should usually be a condition for the grant of a classified contract. The government should sponsor security education programmes in firms with classified contracts. (275-277)

(f) Certain detailed arrangements should be made between Canada and the United States to expedite industrial security procedures. (279, 280)

(g) The regulations concerning the handling and control of classified documents by industry should be improved and rationalized by the government in consultation with industry. (281-284)

(h) Industrial security procedures and decisions should be subject to the same audit and enforcement by the Security Secretariat, advised where necessary by the Security Service, as procedures in other areas. (270)

Security of Information

305. We Recommend that the following steps be taken:

(a) The use of the classification Restricted (or such equivalents as "For Official Use Only") should be abandoned, and any documents containing information below the level of Confidential should be unclassified and should be protected only by the normal disciplinary rule against the unauthorized disclosure of any official information. (195)

(b) The responsibility for declassifying documents should remain with individual departments, who should perform this task as the occasion arises, and in consultation with other authorities where necessary. (197, 198)

(c) Certain detailed measures should be taken by all departments and agencies charged with the custody of classified documents, including the centralization of arrangements for document copying, the physical separation of highly classified information in special areas to which access is permitted only to cleared personnel, and the paying of strict attention to the "need-to-know" principle in the dissemination of classified documents. (199-201)

(d) Government policy on the release of official documents for historical and other research should be clarified and made known by means of published regulations. (223, 224)

(e) National policy and procedures concerning the release of classified information to other nations should be formulated and coordinated in the Security Secretariat, which should also coordinate exchanges of unclassified information between government departments and the communist countries. (253, 254)

(f) Consideration should be given to a complete revision of the Official Secrets Act. (213)

Physical, Technical and Communications Security
Sources and Techniques

306. We Recommend that:

(a) Any building which contains classified material should be effectively protected at all times. Steps should be taken as a matter of urgency to provide security guards where necessary, and consideration should be given to the establishment of an escort system in more sensitive buildings during working hours. (227, 228)

(b) All technical security agencies should be combined and form a section of the protective security branch of the Security Service. (229)

(c) In any future legislation concerning the interception of telephone conversations and electronic eavesdropping exemptions should be made for their use for security purposes under proper safeguards. Interception of telephone conversations should only be conducted by the Security Service on the authority of its designated minister; electronic eavesdropping should be permitted on the authority of the Head of the Service. (291-293)

(d) Arrangements should be made to permit the examination of the mail of persons suspected on reasonable grounds of being engaged in activities dangerous to the security of the state; such examination should be conducted only on the authority of the designated minister. (294)

APPENDIX "A"

to Report of
Royal Commission
on Security

COMMISSION

appointing

Maxwell Weir Mackenzie, Esquire, Yves Pratte, Esquire, and the Honourable Major James William Coldwell,
Commissioners under Part I of the Inquiries Act to make a full and confidential inquiry into the operation of Canadian security methods and procedures.

DATED ..... 16th December, 1966

RECORDED .....16th December, 1966

Film 197 Document 174

(Sgd.) L. McCANN
FOR DEPUTY REGISTRAR GENERAL OF CANADA

(Sgd.) GEORGES P. VANIER

CANADA

ELIZABETH THE SECOND, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories QUEEN, Head of the Commonwealth, Defender of the Faith.

(Sgd.) E. A. DRIEDGER
DEPUTY ATTORNEY GENERAL

TO ALL TO WHOM these Presents shall come or whom the same may in anywise concern,

GREETING:

WHEREAS pursuant to the provisions of Part I of the Inquiries Act, chapter 154 of the Revised Statutes of Canada, 1952, His Excellency the Governor in Council, by Order P.C. 1966-2148 of the sixteenth day of November in the year of Our Lord one thousand nine hundred and sixty-six, a copy of which is annexed, has authorized the appointment of Our Commissioners therein and hereinafter named to make a full and confidential inquiry into the operation of Canadian security methods and procedures and, having regard to the necessity of maintaining

(*a*) the security of Canada as a nation; and

(*b*) the rights and responsibilities of individual persons,

to advise what security methods and procedures are most effective and how they can best be implemented, and to make such reports for this purpose as they deem necessary and desirable in the national interest, and has conferred certain rights, powers and privileges upon Our said Commissioners as will by reference to the said Order more fully appear.

NOW KNOW YE that, by and with the advice of Our Privy Council for Canada, We do by these Presents nominate, constitute and appoint Maxwell Weir Mackenzie, Esquire, of the City of Montreal in the Province of Quebec, Yves Pratte, Esquire, of Quebec City in the Province of Quebec, and the Honourable Major James William Coldwell, of the City of Ottawa in the Province of Ontario to be Our Commissioners to conduct such inquiry.

TO HAVE, HOLD, exercise and enjoy the said office, place and trust unto the said Maxwell Weir Mackenzie, Yves Pratte and Major James William Coldwell, together with the rights, powers, privileges and emoluments unto the said office, place and trust of right and by law appertaining during Our Pleasure.

AND WE DO HEREBY direct that the proceedings of the inquiry be held in camera and that Our said Commissioners, in conducting their inquiry and in making their reports, consider and take all steps necessary to preserve

(*a*) the secrecy of sources of security information within Canada;

(*b*) the privacy of individuals involved in specific cases which may be examined; and

(*c*) the security of information provided to Canada in confidence by other nations.

AND WE DO HEREBY FURTHER direct that Our said Commissioners follow established security procedures with regard to their staff and the handling of classified information at all stages of the inquiry.

AND WE DO HEREBY authorize Our said Commissioners to exercise all the powers conferred upon them by section 11 of the Inquiries Act.

AND WE DO FURTHER authorize Our said Commissioners to sit at such times and at such places as they may decide from time to time.

AND WE DO FURTHER authorize Our said Commissioners to engage the services of such counsel, staff and technical advisers as they may require, at rates of remuneration and reimbursement approved by the Treasury Board.

AND WE DO HEREBY require and direct Our said Commissioners to report to Our Governor in Council with all reasonable dispatch, and file with the Privy Council Office the papers and records of the Commission as soon as reasonably may be after the conclusion of the inquiry.

AND WE DO HEREBY appoint Maxwell Weir Mackenzie of the City of Montreal in the Province of Quebec to be Chairman of the Commission.

IN TESTIMONY WHEREOF We have caused these Our Letters to be made Patent and the Great Seal of Canada to be hereunto affixed.

WITNESS:

Our Right Trusty and Well-beloved Counsellor, General Georges P. Vanier, a member of Our Most Honourable Privy Council, Companion of Our Distinguished Service Order upon whom We have conferred Our Military Cross and Our Canadian Forces' Decoration, Governor General and Commander-in-Chief of Canada.

AT OUR GOVERNMENT HOUSE, in Our City of Ottawa, this sixteenth day of December in the year of Our Lord one thousand nine hundred and sixty-six and in the fifteenth year of Our Reign.

BY COMMAND,

(Sgd.) Jean Miquelon
DEPUTY REGISTRAR GENERAL OF CANADA

ORDER IN COUNCIL

P.C. 1966-2148

Certified to be a true copy of a Minute of a Meeting of the Committee of the Privy Council, approved by His Excellency the Governor General on the 16th November, 1966.

The Committee of the Privy Council, on the recommendation of the Right Honourable Lester Bowles Pearson, the Prime Minister, advise

1. that Mr. M. W. Mackenzie, Montreal, Quebec, Mr. Yves Pratte, Quebec City, Quebec, and Honourable M. J. Coldwell, Ottawa, Ontario, be appointed Commissioners under Part I of the Inquiries Act to make a full and confidential inquiry into the operation of Canadian security methods and procedures and, having regard to the necessity of maintaining

   (*a*) the security of Canada as a nation; and

   (*b*) the rights and responsibilities of individual persons.

   to advise what security methods and procedures are most effective and how they can best be implemented, and to make such reports for this purpose as they deem necessary and desirable in the national interest;

2. that the proceedings of the inquiry be held in camera and that the Commissioners, in conducting their inquiry and in making their reports, consider and take all steps necessary to preserve

   (*a*) the secrecy of sources of security information within Canada;

   (*b*) the privacy of individuals involved in specific cases which may be examined; and

   (*c*) the security of information provided to Canada in confidence by other nations;

3. that the Commissioners follow established security procedure with regard to their staff and the handling of classified information at all stages of the inquiry;

4. that the Commissioners be authorized to exercise all the powers conferred on them by section 11 of the Inquiries Act;

5. that the Commissioners be authorized to sit at such times and at such places as they may decide from time to time;

6. that the Commissioners be authorized to engage the services of such counsel, staff and technical advisers as they may require, at rates of remuneration and reimbursement approved by the Treasury Board;

7. that the Commissioners report to the Governor in Council with all reasonable dispatch, and file with the Privy Council Office the papers and records of the Commission as soon as reasonably may be after the conclusion of the inquiry; and

8. that Mr. M. W. Mackenzie, Montreal, Quebec, be Chairman of the Commission.

(Sgd.) R. G. Robertson
CLERK OF THE PRIVY COUNCIL

APPENDIX "B"

to Report of
Royal Commission
on Security

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APPENDIX "C"

to Report of
Royal Commission
on Security

OFFICIAL SECRETS ACT

I. Canadian Official Secrets Act (R.S.C. 1952, c. 198)

II. Extract from Canadian Forces Reorganization Act (S.C. 1966-67, c. 96)

III. Loi sur les secrets officiels (S.R. du C. 1952, c. 198)

IV. Extract from Loi sur la réorganization des Forces canadiennes (S. du C. 1966-67, c. 96)

CHAPTER 198.

An Act respecting Official Secrets.

SHORT TITLE.

1. This Act may be cited as the *Official Secrets Act.* 1939, c. 49, s. 1. Short title.

INTERPRETATION.

2. In this Act, Definitions.

(a) "Attorney General" means the Attorney General of Canada; "Attorney General."

(b) "document" includes part of a document; "Document."

(c) "model" includes design, pattern and specimen; "Model."

(d) "munitions of war" means arms, ammunition, implements or munitions of war, army, naval or air stores, or any articles deemed capable of being converted thereinto, or made useful in the production thereof; "Munitions of war."

(e) "offence under this Act" includes any act, omission, or other thing that is punishable hereunder; "Offence under this Act."

(f) "office under Her Majesty" includes any office or employment in or under any department or branch of the Government of Canada or of any province, and any office or employment in, on or under any board, commission, corporation or other body that is an agent of Her Majesty in right of Canada or any province; "Office under Her Majesty."

(g) "prohibited place" means "Prohibited place."

(i) any work of defence belonging to or occupied or used by or on behalf of Her Majesty including arsenals, naval, army or air force establishments or stations, factories, dockyards, mines, minefields, camps, ships, aircraft, telegraph, telephone, wireless or signal stations or offices, and places used for the purpose of building, repairing, making or storing any munitions of war or any sketches, plans, models, or documents relating thereto, or for the purpose of getting any metals, oil or minerals of use in time of war,

(ii) any place not belonging to Her Majesty where any munitions of war or any sketches, models, plans or documents relating thereto, are being made, repaired, gotten or stored under contract with, or with any person on behalf of, Her Majesty, or otherwise on behalf of Her Majesty, and

(iii) any place that is for the time being declared by order of the Governor in Council to be a prohibited place on the ground that information with respect thereto or damage thereto would be useful to a foreign power;

"Sketch." *(h)* "sketch" includes any mode of representing any place or thing;

"Senior police officer." *(i)* "senior police officer" means any officer of the Royal Canadian Mounted Police not below the rank of Inspector; any officer of any provincial police force of a like or superior rank; the chief constable of any city or town with a population of not less than ten thousand; or any person upon whom the powers of a senior police officer are for the purposes of this Act conferred by the Governor in Council;

Reference to Her Majesty. *(j)* any reference to Her Majesty means Her Majesty in right of Canada or of any province; and

Communicating or receiving. *(k)* expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document or information itself or the substance, effect, or description thereof only is communicated or received; expressions referring to obtaining or retaining any sketch, plan, model, article, note, or document, include the copying or causing to be copied the whole or any part of any sketch, plan, model, article, note, or document; and expressions referring to the communication of any sketch, plan, model, article, note or document include the transfer or transmission of the sketch, plan, model, article, note or document. 1939, c. 49, s. 2; 1950, c. 46, s. 1.

Spying. **3.** (1) Every person who, for any purpose prejudicial to the safety or interests of the State,

(a) approaches, inspects, passes over, or is in the neighbourhood of, or enters any prohibited place;

(b) makes any sketch, plan, model or note that is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power; or

(c) obtains, collects, records, or publishes, or communicates to any other person any secret official code word,

or

or pass word, or any sketch, plan, model, article, or note, or other document or information that is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power;

is guilty of an offence under this Act.

Accused person may be convicted if purpose prejudicial to the safety of the State.

(2) On a prosecution under this section, it is not necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case, or his conduct, or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document or information relating to or used in any prohibited place, or anything in such a place, or any secret official code word or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, it shall be deemed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the State unless the contrary is proved.

Communication with agent of foreign power, etc., sufficient evidence.

(3) In any proceedings against a person for an offence under this section, the fact that he has been in communication with, or attempted to communicate with, an agent of a foreign power, whether within or without Canada, is evidence that he has, for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information that is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power.

When person deemed to have been in communication with agent of a foreign power.

(4) For the purpose of this section, but without prejudice to the generality of the foregoing provision

(a) a person shall, unless he proves the contrary, be deemed to have been in communication with an agent of a foreign power if

(i) he has, either within or without Canada, visited the address of an agent of a foreign power or consorted or associated with such agent, or

(ii) either within or without Canada, the name or address of, or any other information regarding such an agent has been found in his possession, or has been supplied by him to any other person, or has been obtained by him from any other person;

"An agent of a foreign power" defined.

(b) "an agent of a foreign power" includes any person who is or has been or is reasonably suspected of being or having been employed by a foreign power either

directly or indirectly for the purpose of committing an act, either within or without Canada, prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without Canada, committed, or attempted to commit, such an act in the interests of a foreign power; and

When address deemed that of an agent of a foreign power.

(c) any address, whether within or without Canada, reasonably suspected of being an address used for the receipt of communications intended for an agent of a foreign power, or any address at which such an agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, shall be deemed to be the address of an agent of a foreign power, and communications addressed to such an address to be communications with such an agent. 1939, c. 49, s. 3.

Wrongful communication, etc., of information.

4. (1) Every person who, having in his possession or control any secret official code word, or pass word, or any sketch, plan, model, article, note, document or information that relates to or is used in a prohibited place or anything in such a place, or that has been made or obtained in contravention of this Act, or that has been entrusted in confidence to him by any person holding office under Her Majesty, or that he has obtained or to which he has had access while subject to the Code of Service Discipline within the meaning of the *National Defence Act* or owing to his position as a person who holds or has held office under Her Majesty, or as a person who holds or has held a contract made on behalf of Her Majesty, or a contract the performance of which in whole or in part is carried out in a prohibited place, or as a person who is or has been employed under a person who holds or has held such an office or contract,

(a) communicates the code word, pass word, sketch, plan, model, article, note, document or information to any person, other than a person to whom he is authorized to communicate with, or a person to whom it is in the interest of the State his duty to communicate it;

(b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety or interests of the State;

(c) retains the sketch, plan, model, article, note, or document in his possession or control when he has no right to retain it or when it is contrary to his duty

to retain it or fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

(d) fails to take reasonable care of, or so conducts himself as to endanger the safety of the sketch, plan, model, article, note, document, secret official code word or pass word or information;

is guilty of an offence under this Act.

Communication of sketch, plan, model, etc.

(2) Every person who, having in his possession or control any sketch, plan, model, article, note, document or information that relates to munitions of war, communicates it directly or indirectly to any foreign power, or in any other manner prejudicial to the safety or interests of the State, is guilty of an offence under this Act.

Receiving code word, sketch, etc.

(3) Every person who receives any secret official code word, or pass word, or sketch, plan, model, article, note, document or information, knowing, or having reasonable ground to believe, at the time when he receives it, that the code word, pass word, sketch, plan, model, article, note, document or information is communicated to him in contravention of this Act, is guilty of an offence under this Act, unless he proves that the communication to him of the code word, pass word, sketch, plan, model, article, note, document or information was contrary to his desire.

(4) Every person who

Retaining official document, etc.

(a) retains for any purpose prejudicial to the safety or interests of the State any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or fails to comply with any directions issued by any Government department or any person authorized by such department with regard to the return or disposal thereof; or

Allowing other to have possession

(b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code word or pass word so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code word or pass word issued for the use of some person other than himself, or on obtaining possession of any official document by finding or otherwise, neglects or fails to restore it to the person or authority by whom or for whose use it was issued, or to a police constable;

is guilty of an offence under this Act. 1939, c. 49, s. 4; 1951 (2nd Sess.), c. 7, s. 28.

Unauthorized use of uniforms; falsification of reports, forgery, personation and false documents.

5. (1) Every person who, for the purpose of gaining admission, or of assisting any other person to gain admission, to a prohibited place, or for any other purpose prejudicial to the safety or interests of the State,

(a) uses or wears, without lawful authority, any naval, army, air force, police or other official uniform or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform;

(b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission;

(c) forges, alters, or tampers with any passport or any naval, army, air force, police or official pass, permit, certificate, licence or other document of a similar character, (hereinafter in this section referred to as an official document), or uses or has in his possession any such forged, altered, or irregular official document;

(d) personates, or falsely represents himself to be a person holding, or in the employment of a person holding, office under Her Majesty, or to be or not to be a person to whom an official document or secret official code word or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code word or pass word, whether for himself or any other person, knowingly makes any false statement; or

(e) uses, or has in his possession or under his control, without the authority of the Government department or the authority concerned, any die, seal, or stamp of or belonging to, or used, made, or provided by any Government department, or by any diplomatic, naval, army, or air force authority appointed by or acting under the authority of Her Majesty, or any die, seal or stamp, so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or uses, or has in his possession, or under his control, any such counterfeited die, seal or stamp;

is guilty of an offence under this Act.

Unlawful dealing with dies, seals, etc.

(2) Every person who, without lawful authority or excuse, manufactures or sells, or has in his possession for sale any such die, seal or stamp as aforesaid, is guilty of an offence under this Act. 1939, c. 49, s. 5.

6. No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede any constable or police officer, or any member of Her Majesty's forces engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place, and every person who acts in contravention of, or fails to comply with, this provision, is guilty of an offence under this Act. 1939, c. 49, s. 6. Interfering with officers of the police or members of Her Majesty's forces.

7. (1) Where it appears to the Minister of Justice that such a course is expedient in the public interest, he may, by warrant under his hand, require any person who owns or controls any telegraphic cable or wire, or any apparatus for wireless telegraphy, used for the sending or receipt of telegrams to or from any place out of Canada, to produce to him, or to any person named in the warrant, the originals and transcripts, either of all telegrams, or of telegrams of any specified class or description, or of telegrams sent from or addressed to any specified person or place, sent to or received from any place out of Canada by means of any such cable, wire, or apparatus and all other papers relating to any such telegram as aforesaid. Power to require the production of telegrams.

(2) Every person who, on being required to produce any such original or transcript or paper as aforesaid, refuses or neglects to do so is guilty of an offence under this Act, and is for each offence, liable on summary conviction to imprisonment, with or without hard labour, for a term not exceeding three months, or to a fine not exceeding two hundred dollars, or to both such imprisonment and fine. 1939, c. 49, s. 7. Refusing or neglecting to produce original, etc. Penalty.

8. Every person who knowingly harbours any person whom he knows, or has reasonable grounds for supposing, to be a person who is about to commit or who has committed an offence under this Act, or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, and every person who, having harboured any such person, or permitted to meet or assemble in any premises in his occupation or under his control any such persons, wilfully omits or refuses to disclose to a senior police officer any information that it is in his power to give in relation to any such person, is guilty of an offence under this Act. 1939, c. 49, s. 8. Harbouring spies.

9. Every person who attempts to commit any offence under this Act, or solicits or incites or endeavours to persuade another person to commit an offence, or aids or abets and does any act preparatory to the commission of an Attempts, incitements, etc.

offence under this Act, is guilty of an offence under this Act and is liable to the same punishment, and to be proceeded against in the same manner, as if he had committed the offence. 1939, c. 49, s. 9.

Power to arrest without warrant.

10. Every person who is found committing an offence under this Act, or who is reasonably suspected of having committed, or having attempted to commit, or being about to commit, such an offence, may be arrested without a warrant and detained by any constable or police officer. 1939, c. 49, s. 10.

Search warrants.

11. (1) If a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search warrant authorizing any constable named therein, to enter at any time any premises or place named in the warrant, if necessary by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note or document, or anything that is evidence of an offence under this Act having been or being about to be committed, that he may find on the premises or place or on any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

In case of great emergency.

(2) Where it appears to an officer of the Royal Canadian Mounted Police not below the rank of Superintendent that the case is one of great emergency and that in the interest of the State immediate action is necessary, he may by a written order under his hand give to any constable the like authority as may be given by the warrant of a justice under this section. 1939, c. 49, s. 11.

Prosecution only with consent of Attorney General.

12. A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Attorney General; except that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney General to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained. 1939, c. 49, s. 12.

Offences committed outside Canada triable in Canada.

13. An Act, omission or thing that would, by reason of this Act, be punishable as an offence if committed in Canada, is, if committed outside Canada, an offence against this Act, triable and punishable in Canada, in the following cases:

(a) where the offender at the time of the commission was a Canadian citizen within the meaning of the *Canadian Citizenship Act;* or

(b) where any code word, pass word, sketch, plan, model, article, note, document, information or other thing whatsoever in respect of which an offender is charged was obtained by him, or depends upon information that he obtained, while owing allegiance to Her Majesty. 1950, c. 46, s. 2.

Where offence deemed to have been committed.

14. (1) For the purposes of the trial of a person for an offence under this Act, the offence shall be deemed to have been committed either at the place in which the same actually was committed, or at any place in Canada in which the offender may be found.

Public may be excluded from trial.

(2) In addition and without prejudice to any powers that a court may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a court against any person for an offence under this Act or the proceedings on appeal, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the interest of the State, that all or any portion of the public shall be excluded during any part of the hearing, the court may make an order to that effect, but the passing of sentence shall in any case take place in public.

Where guilty person a company or corporation.

(3) Where the person guilty of an offence under this Act is a company or corporation, every director and officer of the company or corporation is guilty of the like offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent. 1939, c. 49, s. 13.

Penalties.

15. (1) Where no specific penalty is provided in this Act, any person who is guilty of an offence under this Act shall be deemed to be guilty of an indictable offence and is, on conviction, punishable by imprisonment for a term not exceeding fourteen years; but such person may, at the election of the Attorney General, be prosecuted summarily in the manner provided by the provisions of the *Criminal Code* relating to summary convictions, and, if so prosecuted, is punishable by fine not exceeding five hundred dollars, or by imprisonment not exceeding twelve months, or by both fine and imprisonment.

General. Indictable offence.

Summary conviction.

Application of the *Identification of Criminals Act.*

(2) Any person charged with or convicted for an offence under this Act shall, for the purposes of the *Identification of Criminals Act*, be deemed to be charged with or convicted of an indictable offence notwithstanding that such person is prosecuted summarily in the manner provided by the provisions of the *Criminal Code* relating to summary convictions. 1950, c. 46, s. 3.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1952

CHAP. 96

An Act to amend the National Defence Act and other Acts in consequence thereof.

[*Assented to 8th May, 1967.*]

R.S., cc. 184, 310; 1952-53, cc. 6, 24; 1953-54, cc. 13, 21, 40; 1955, c. 28; 1956, c. 18; 1959, c. 5; 1964-65, c. 21.

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE.

Short title.

1. This Act may be cited as the *Canadian Forces Reorganization Act.*

. . .

64. The Acts and portions of Acts set out in Schedule B are repealed or amended in the manner and to the extent indicated in that Schedule.

. . .

SCHEDULE B.

Amendments and Repeals.

Act affected.	Repeal or amendment.
Official Secrets Act R.S., c. 198	1. Paragraph (*d*) of section 2 is repealed and the following substituted therefor: "(*d*) "munitions of war" means arms, ammunition, implements or munitions of war, military stores, or any articles deemed capable of being converted thereinto, or made useful in the production thereof;" 2. Subparagraph (i) of paragraph (*g*) of section 2 is repealed and the following substituted therefor: "(i) any work of defence belonging to or occupied or used by or on behalf of Her Majesty including arsenals,

SCHEDULE B—*Continued*

Act affected.	Repeal or amendment.
	armed forces establishments or stations, factories, dockyards, mines, minefields, camps, ships, aircraft, telegraph, telephone, wireless or signal stations or offices, and places used for the purpose of building, repairing, making or storing any munitions of war or any sketches, plans, models, or documents relating thereto, or for the purpose of getting any metals, oil or minerals of use in time of war,"
	3. Paragraph (*a*) of subsection (1) of section 5 is repealed and the following substituted therefor: "(*a*) uses or wears, without lawful authority, any military, police or other official uniform or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform;"
	4. Paragraph (*c*) of subsection (1) of section 5 is repealed and the following substituted therefor: "(*c*) forges, alters, or tampers with any passport or any military, police or official pass, permit, certificate, licence or other document of a similar character, (hereinafter in this section referred to as an official document), or uses or has in his possession any such forged, altered, or irregular official document;"
	5. Paragraph (*e*) of subsection (1) of section 5 is repealed and the following substituted therefor: "(*e*) uses, or has in his possession or under his control, without the authority of the Government department or the authority concerned, any die, seal, or stamp of or belonging to, or used, made,

SCHEDULE B—*Continued*

Act affected.	Repeal or amendment.
	or provided by any Government department, or by any diplomatic or military authority appointed by or acting under the authority of Her Majesty, or any die, seal or stamp, so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or uses, or has in his possession, or under his control, any such counterfeited die, seal or stamp;"

CHAPITRE 198.

Loi concernant les secrets officiels.

TITRE ABRÉGÉ.

1. La présente loi peut être citée sous le titre: *Loi sur les secrets officiels.* 1939, c. 49, art. 1. Titre abrégé.

INTERPRÉTATION.

2. Dans la présente loi, l'expression Définitions.

a) «procureur général» signifie le procureur général du Canada; «Procureur général.»

b) «document» comprend toute partie d'un document; «Document.»

c) «modèle» comprend tout dessin, patron et spécimen; «Modèle.»

d) «munitions de guerre» signifie les armes, le matériel ou les munitions de guerre, les fournitures de l'armée, de la marine ou de l'aviation ou tout article susceptible d'être converti en l'un des susdits ou qui peut être utilisable dans leur production; «Munitions de guerre.»

e) «infraction à la présente loi» comprend tout acte, omission ou autre chose punissable sous le régime de la présente loi; «Infraction à la présente loi.»

f) «fonction relevant de Sa Majesté» comprend toute charge ou tout emploi dans quelque département ou division du gouvernement du Canada ou d'une province, ou qui en relève, ainsi que toute charge ou tout emploi dans ou sur un conseil, une commission, un office, une corporation ou un autre organisme qui est mandataire de Sa Majesté du chef du Canada ou d'une province, et toute charge ou tout emploi relevant d'un tel conseil, commission, office, corporation ou autre organisme; «Fonction relevant de Sa Majesté.»

g) «endroit prohibé» signifie «Endroit prohibé.»

(i) tout ouvrage de défense appartenant à Sa Majesté ou occupé ou utilisé par Elle ou pour son compte, y compris les arsenaux, les stations ou établissements de la marine, de l'armée ou de l'aviation, les usines, les chantiers de construction maritime, les mines, les régions minières, les camps, les navires,

les aéronefs, les postes ou bureaux de télégraphe, de téléphone, de radiotélégraphie ou de transmission, et les endroits utilisés en vue de la construction, de la réparation, de la fabrication ou de l'emmagasinage de munitions de guerre ou des croquis, plans ou modèles, ou des documents y afférents, ou en vue de l'obtention de métaux, d'huiles ou de minéraux en usage en temps de guerre;

(ii) tout endroit n'appartenant pas à Sa Majesté, où des munitions de guerre ou des croquis, modèles, plans ou documents y afférents sont fabriqués, réparés, obtenus ou emmagasinés en vertu d'un contrat passé avec Sa Majesté ou avec toute personne pour son compte, ou, d'autre façon, passé au nom de Sa Majesté, et

(iii) tout endroit que le gouverneur en conseil, par arrêté, déclare pour le moment être un endroit prohibé pour le motif que des renseignements à son égard ou des dommages qu'il pourrait subir seraient utiles à une puissance étrangère;

«Croquis.» *h*) «croquis» comprend toute manière de représenter un endroit ou une chose;

«Agent de police supérieur.» *i*) «agent de police supérieur» signifie un officier de la Gendarmerie royale du Canada dont le grade n'est pas inférieur à celui d'inspecteur; un membre d'une police provinciale d'un grade semblable ou supérieur; le chef de police d'une cité ou ville ayant une population d'au moins dix mille âmes; ou toute personne à qui le gouverneur en conseil a conféré les pouvoirs d'un agent de police supérieur pour les fins de la présente loi;

Mention de Sa Majesté *j*) toute mention de Sa Majesté signifie Sa Majesté du chef du Canada ou d'une province;

Communication ou réception. *k*) les expressions se rapportant à la communication ou à la réception comprennent toute communication ou réception, qu'elle soit totale ou partielle ou que le croquis, le plan, le modèle, l'article, la note, le document ou le renseignement même ou la substance, l'effet ou la description des susdits seulement soit communiquée ou reçue; les expressions visant l'obtention ou la rétention d'un croquis, plan, modèle, article, note ou document comprennent la reproduction ou le fait de faire reproduire la totalité ou toute partie d'un croquis, plan, modèle, article, note ou document; et les expressions ayant trait à la communication d'un croquis, plan, modèle, article, note ou document comprennent le transfert ou la transmission du croquis, plan, modèle, article, note ou document. 1939, c. 49, art. 2; 1950, c. 46, art. 1.

Espionnage.

3. (1) Est coupable d'infraction à la présente loi quiconque, dans un dessein nuisible à la sécurité ou aux intérêts de l'Etat,

a) s'approche d'un endroit prohibé, l'inspecte, le traverse, se trouve dans son voisinage ou y pénètre;

b) prend une note ou fait un croquis, plan ou modèle propre ou destiné à aider, ou susceptible d'aider directement ou indirectement à une puissance étrangère; ou

c) obtient, recueille, enregistre, publie ou communique à une autre personne un chiffre officiel ou mot de passe, ou un croquis, plan, modèle, article, note ou autre document ou renseignement propre ou destiné à aider, ou susceptible d'aider, directement ou indirectement une puissance étrangère.

L'accusé peut être déclaré coupable si son dessein est nuisible à la sécurité de l'Etat.

(2) Dans une poursuite intentée sous le régime du présent article, il n'est pas nécessaire de démontrer que l'accusé était coupable d'un acte particulier indiquant un dessein nuisible à la sécurité ou aux intérêts de l'Etat, et, bien que la preuve d'un tel acte ne soit pas établie à son encontre, il peut être déclaré coupable s'il apparaît, d'après les circonstances de l'espèce, sa conduite ou la preuve de sa réputation, que son dessein était nuisible à la sécurité ou aux intérêts de l'Etat; et si un croquis, un plan, un modèle, un article, une note, un document ou un renseignement se rapportant à un endroit prohibé ou qui y est utilisé, ou quelque chose en cet endroit, ou un chiffre officiel ou mot de passe est fabriqué, obtenu, recueilli, enregistré, publié ou communiqué par une personne autre qu'une personne légalement autorisée, il est censé avoir été fabriqué, obtenu, recueilli, enregistré, publié ou communiqué dans un dessein nuisible à la sécurité ou aux intérêts de l'Etat, à moins de preuve contraire.

Communication avec l'agent d'une puissance étrangère, etc., est une preuve suffisante.

(3) Dans toute procédure intentée contre une personne pour une infraction au présent article, le fait qu'elle a communiqué ou qu'elle a tenté de communiquer avec un agent d'une puissance étrangère, au Canada ou hors du Canada, constitue la preuve qu'elle a, dans un dessein nuisible à la sécurité ou aux intérêts de l'Etat, obtenu ou tenté d'obtenir des renseignements propres ou destinés à aider ou susceptibles d'aider, directement ou indirectement une puissance étrangère.

Quand une personne est censée avoir été en communication avec l'agent d'une puissance étrangère.

(4) Pour les fins du présent article, mais sans préjudice de la teneur générale de la disposition précitée,

a) une personne, à moins de preuve contraire, est censée avoir communiqué avec un agent d'une puissance étrangère,

(i) si elle a, au Canada ou hors du Canada, visité l'adresse d'un agent d'une puissance étrangère ou a fréquenté cet agent ou s'est associée avec lui, ou

(ii) si, au Canada ou hors du Canada, le nom ou l'adresse, ou tout autre renseignement concernant cet agent a été trouvé en sa possession, ou lui a été fourni par une autre personne ou a été obtenu par elle d'une autre personne;

Définition de «un agent d'une puissance étrangère».

b) l'expression «un agent d'une puissance étrangère» comprend toute personne qui est ou a été ou qui est raisonnablement soupçonnée d'être au d'avoir été à l'emploi d'une puissance étrangère, directement ou indirectement, aux fins de commettre, au Canada ou hors du Canada, un acte nuisible à la sécurité ou aux intérêts de l'Etat, ou qui a ou est raisonnablement soupçonnée d'avoir, au Canada ou hors du Canada, commis ou tenté de commettre un tel acte dans l'intérêt d'une puissance étrangère; et

Quand l'adresse est censée être celle d'un agent d'une puissance étrangère.

c) toute adresse, au Canada ou hors du Canada, raisonnablement soupçonnée d'être l'adresse utilisée pour la réception de communications destinées à un agent d'une puissance étrangère, ou toute adresse où demeure cet agent ou dont il se sert pour la transmission ou la réception de communications, ou à laquelle il exerce un commerce, est censée l'adresse d'un agent d'une puissance étrangère, et les communications envoyées à cette adresse sont censées des communications à cet agent. 1939, c. 49, art. 3.

Communication, etc., illicite de renseignements.

4. (1) Est coupable d'infraction à la présente loi quiconque, ayant en sa possession ou contrôle un chiffre officiel ou mot de passe, ou un croquis, plan, modèle, article, note, document ou renseignement se rapportant à un endroit prohibé ou à quelque chose en cet endroit ou qui y est utilisé, ou qui a été fabriqué ou obtenu contrairement à la présente loi, ou qui lui a été confié par une personne détenant une fonction relevant de Sa Majesté, ou qu'il a obtenu ou auquel il a eu accès, alors qu'il était assujéti au Code de discipline militaire au sens de la *Loi sur la défense nationale,* ou à titre de personne détenant ou ayant détenu une fonction relevant de Sa Majesté, ou à titre de personne qui est ou a été l'adjudicataire d'un contrat passé pour le compte de Sa Majesté, ou d'un contrat qui est exécuté en totalité ou en partie dans un endroit prohibé, ou à titre de personne qui est ou a été à l'emploi de quelqu'un qui détient ou a détenu cette fonction, ou est ou a été l'adjudicataire du contrat,

a) communique le chiffre, mot de passe, croquis, plan, modèle, article, note, document ou renseignement à toute personne autre que celle avec laquelle il est autorisé à communiquer ou à qui il est tenu de le communiquer dans l'intérêt de l'Etat;

b) utilise les renseignements qu'il a en sa possession au profit d'une puissance étrangère ou de toute autre manière nuisible à la sécurité ou aux intérêts de l'Etat;

c) retient le croquis, le plan, le modèle, l'article, la note ou le document qu'il a en sa possession ou contrôle quand il n'a pas le droit de le retenir, ou lorsqu'il est contraire à son devoir de le retenir, ou qu'il ne se conforme pas aux instructions données par l'autorité compétente relativement à sa mise ou à la façon d'en disposer; ou

d) ne prend pas les précautions raisonnables en vue de la conservation du croquis, du plan, du modèle, de l'article, de la note, du document, du chiffre officiel ou mot de passe ou du renseignement, ou se conduit de manière à en compromettre la sécurité.

Communication du croquis, plan, modèle, etc.

(2) Est coupable d'infraction à la présente loi quiconque, ayant en sa possession ou contrôle un croquis, plan, modèle, article, note, document ou renseignement se rapportant à des munitions de guerre, en donne communication directement ou indirectement à une puissance étrangère, ou de toute autre manière nuisible à la sécurité ou aux intérêts de l'Etat.

Réception du chiffre officiel, croquis, etc.

(3) Si une personne reçoit un chiffre officiel ou mot de passe, ou un croquis, plan, modèle, article, note, document ou renseignement, sachant ou ayant raisonnablement lieu de croire, au moment où elle le reçoit, que le chiffre, le mot de passe, le croquis, le plan, le modèle, l'article, la note, le document ou le renseignement lui est communiqué contrairement à la présente loi, cette personne est coupable d'infraction à la présente loi, à moins qu'elle ne prouve que la communication à elle faite du chiffre, mot de passe, croquis, plan, modèle, article, note, document ou renseignement était contraire à son désir.

Rétention de documents officiels, etc.

(4) Est coupable d'infraction à la présente loi, quiconque

a) retient, dans un dessein nuisible à la sécurité ou aux intérêts de l'Etat, un document officiel, qu'il soit ou non complété ou émis pour usage, lorsqu'il n'a pas le droit de le retenir ou lorsqu'il est contraire à son devoir de le retenir, ou ne se conforme pas aux instructions données par un département du gouvernement ou par toute personne autorisée par ce département concernant la remise dudit document officiel ou la façon d'en disposer; ou

Permettre à d'autres personnes de l'avoir en sa possession.

b) permet qu'un document officiel émis pour son propre usage entre en la possession d'une autre personne, ou communique un chiffre officiel ou mot de passe ainsi émis, ou, sans autorité ni excuse légitime, a en sa possession un document officiel ou un chiffre officiel ou mot de passe émis pour l'usage d'une personne autre que lui-même, ou, en obtenant possession d'un document officiel par découverte ou autrement, néglige ou omet de le remettre à la personne ou à l'autorité par qui ou pour l'usage de laquelle il a été émis, ou à un agent de police. 1939, c. 49, art. 4; 1951 (2e session), c. 7, art. 28.

Usage illicite de la tenue, falsification de rapports, faux, supposition de personne et faux documents.

5. (1) Est coupable d'infraction à la présente loi, quiconque, dans le dessein d'avoir accès ou d'aider une autre personne à avoir accès à un endroit prohibé, ou pour toute autre fin nuisible à la sécurité ou aux intérêts de l'Etat,

a) endosse ou porte, sans autorité légitime, un uniforme de la marine, de l'armée, de l'aviation ou de la police, ou autre uniforme officiel, ou tout uniforme qui y ressemble au point d'être susceptible d'induire en erreur, ou se représente faussement comme étant une personne qui est ou a été autorisée à endosser ou porter un tel uniforme;

b) verbalement, ou par écrit dans une déclaration ou demande, ou dans un document signé par lui ou en son nom, sciemment fait une fausse déclaration ou une omission, ou la tolère;

c) forge, altère ou falsifie tout passeport ou une passe, un permis, un certificat ou une autorisation officielle ou émise par la marine, l'armée, l'aviation ou la police, ou tout autre document d'une nature semblable (ci-après désigné «document officiel» au présent article), ou qui utilise ou a en sa possession un tel document officiel forgé, altéré ou irrégulier;

d) se fait passer pour une personne ou se représente faussement comme une personne détenant, ou à l'emploi d'une personne détenant, une fonction relevant de Sa Majesté, ou comme étant ou n'étant pas une personne à qui un document officiel ou un chiffre officiel ou mot de passe a été dûment émis ou communiqué, ou, dans l'intention d'obtenir un document officiel, un chiffre officiel ou mot de passe, pour lui-même ou pour une autre personne, fait sciemment une fausse déclaration; ou

e) utilise ou a en sa possession ou sous son contrôle, sans l'autorisation du département du gouvernement ou de l'autorité en cause, une matrice, un sceau ou

un timbre d'un département du gouvernement ou appartenant à ce dernier ou utilisé, fabriqué ou fourni par un semblable département ou une autorité diplomatique, une autorité de la marine, de l'armée ou de l'aviation nommée par Sa Majesté ou agissant sous son autorité, ou une matrice, un sceau ou un timbre qui y ressemble au point d'être susceptible d'induire en erreur, ou contrefait cette matrice, ce sceau ou ce timbre, ou utilise ou a en sa possession ou sous son contrôle une telle matrice, un tel sceau ou un tel timbre contrefait.

Usage illicite de matrices, sceaux, etc.

(2) Est coupable d'infraction à la présente loi quiconque, sans autorité ou excuse légitime, fabrique ou vend ou a en sa possession pour la vente une matrice, un sceau ou un timbre de ce genre. 1939, c. 49, art. 5.

Entraver les agents de police ou les membres des forces de Sa Majesté.

6. Nulle personne dans le voisinage d'un endroit prohibé ne doit entraver, sciemment, induire en erreur, ni autrement contrecarrer ou gêner un gendarme ou agent de police ou un membre des forces de Sa Majesté qui monte la garde, qui est de faction, qui fait la patrouille ou qui remplit d'autres fonctions semblables relativement à l'endroit prohibé, et si cette personne contrevient à la présente disposition ou omet de s'y conformer, elle est coupable d'infraction à la présente loi. 1939, c. 49, art. 6.

Pouvoir de requérir la production des télégrammes.

7. (1) Lorsqu'il estime qu'une telle mesure s'impose dans l'intérêt public, le ministre de la Justice peut, par mandat, revêtu de son seing, requérir toute personne possédant ou contrôlant un câble ou fil télégraphique ou un appareil de radiotélégraphie, utilisé pour la transmission ou la réception de télégrammes à destination ou en provenance de tout endroit situé en dehors du Canada, de lui produire ou de produire à toute personne nommée dans le mandat, les originaux et transcriptions de tous les télégrammes ou des télégrammes d'une catégorie ou description spécifiée, ou des télégrammes transmis par une personne ou d'un endroit spécifié ou adressés à une personne ou à un endroit spécifié, expédiés à un endroit situé en dehors du Canada ou reçus de cet endroit au moyen de ce câble, fil ou appareil, et tous autres papiers se rapportant à tout semblable télégramme.

Refus ou négligence de produire un original, etc.

(2) Quiconque, étant requis de produire un tel original ou une telle transcription ou papier comme il est susdit, refuse ou néglige de le faire, est coupable d'une infraction à la présente loi et passible, pour chaque infraction, sur déclaration sommaire de culpabilité, de l'emprisonnement, avec ou sans travaux forcés, pour une période d'au plus

Peine.

trois mois, ou d'une amende n'excédant pas deux cents dollars, ou à la fois de l'amende et de l'emprisonnement. 1939, c. 49, art. 7.

Héberger des espions.

8. Est coupable d'infraction à la présente loi, quiconque héberge sciemment une personne qu'il croit ou qu'il a raisonnablement lieu de croire être une personne sur le point de commettre ou qui a commis une infraction à la présente loi, ou qui permet sciemment à de telles personnes de se rencontrer ou de se réunir dans des locaux qu'il occupe ou qu'il a sous son contrôle, ou qui, ayant hébergé une telle personne ou permis à de telles personnes de se rencontrer ou de se réunir dans des locaux qu'il occupe ou qu'il a sous son contrôle, omet ou refuse volontairement de dévoiler à un agent de police supérieur des renseignements qu'il peut fournir à l'égard de cette personne. 1939, c. 49, art. 8.

Tentatives, incitations, etc.

9. Est coupable d'infraction à la présente loi, passible des mêmes peines et sujet aux mêmes procédures que s'il avait commis l'infraction, quiconque tente de commettre une infraction à la présente loi, ou sollicite, incite ou cherche à induire une autre personne à commettre une infraction, ou devient son complice et accomplit tout acte en vue de la perpétration d'une infraction à la présente loi. 1939, c. 49, art. 9.

Pouvoir d'arrestation sans mandat.

10. Quiconque est pris sur le fait de commettre une infraction à la présente loi, ou est raisonnablement soupçonné d'avoir commis, d'avoir tenté de commettre ou d'être sur le point de commettre une telle infraction, peut être arrêté sans mandat et détenu par un gendarme ou un agent de police. 1939, c. 49, art. 10.

Mandats de perquisition.

11. (1) Si un juge de paix est convaincu, sur une plainte formulée sous serment, qu'il y a raisonnablement lieu de soupçonner qu'une infraction à la présente loi a été ou est sur le point d'être commise, il peut décerner un mandat de perquisition autorisant tout agent de police y nommé à pénétrer en tout temps dans les lieux ou l'endroit indiqué dans le mandat, en ayant recours à la force au besoin, à perquisitionner dans les lieux ou l'endroit, à fouiller toutes les personnes qui s'y trouvent et à saisir tout croquis, plan, modèle, article, note ou document, ou tout objet constituant une preuve qu'une infraction à la présente loi a été ou est sur le point d'être commise, qu'il peut trouver sur les lieux, dans cet endroit ou sur cette personne, et à l'égard duquel ou relativement auquel il peut raisonnablement soupçonner qu'une infraction à la présente loi a été ou est sur le point d'être commise.

(2) Lorsqu'un officier de la Gendarmerie royale du Canada dont le grade n'est pas inférieur à celui de surintendant est d'avis que l'affaire est extrêmement urgente et que dans l'intérêt de l'Etat des mesures immédiates s'imposent, il peut, moyennant un ordre revêtu de son seing, conférer à un gendarme la même autorité que peut donner le mandat d'un juge de paix sous le régime du présent article. 1939, c. 49, art. 11. En cas de circonstances critiques.

12. Nulle poursuite pour une infraction à la présente loi ne doit être intentée, sauf avec le consentement du procureur général; toutefois, une personne accusée d'une telle infraction peut être arrêtée ou un mandat d'arrestation peut être décerné et exécuté à son égard, et cette personne peut être renvoyée à une autre audience avec détention provisoire ou admise à caution, malgré que le consentement du procureur général à l'ouverture d'une poursuite pour l'infraction n'ait pas été obtenu, mais il ne doit être intenté aucune autre procédure avant que ce consentement ait été obtenu. 1939, c. 49, art. 12. Poursuites avec le consentement du procureur général.

13. Une action, omission ou chose qui, en raison de la présente loi, serait punissable comme infraction si elle avait lieu au Canada, constitue, lorsqu'elle se produit hors du Canada, une infraction à la présente loi, jugeable et punissable au Canada, dans les cas suivants: Les infractions commises hors du Canada sont jugeables dans ce pays.

a) lorsque le contrevenant, à l'époque où l'action, omission ou chose s'est produite, était citoyen canadien au sens de la *Loi sur la citoyenneté canadienne;*

b) lorsqu'un chiffre, mot de passe, croquis, plan, modèle, article, note, document, renseignement ou autre chose à l'égard de quoi un contrevenant est accusé, a été obtenu par ce dernier, ou dépend d'un renseignement par lui obtenu, pendant que le contrevenant devait allégeance à Sa Majesté. 1950, c. 46, art. 2.

14. (1) Aux fins de juger une personne accusée d'infraction à la présente loi, l'infraction est censée avoir été commise à l'endroit où elle l'a été réellement ou à tout endroit du Canada où le contrevenant peut être trouvé. Où l'infraction est censée avoir été commise.

(2) En sus et sans préjudice des pouvoirs qu'un tribunal peut posséder pour ordonner l'exclusion du public de toute audience, si, lors d'une poursuite intentée devant un tribunal contre une personne pour une infraction à la présente loi ou lors des procédures en appel, le ministère public, pour le motif que la publication de tout témoignage qui doit être rendu ou de toute déclaration qui doit être faite au cours Le public peut être exclu du procès.

des procédures serait nuisible aux intérêts de l'Etat, demande l'exclusion de la totalité ou d'une partie du public durant une partie de l'audition, le tribunal peut rendre une ordonnance dans ce sens, mais le prononcé de la sentence doit dans chaque cas avoir lieu en public.

Si la personne coupable est une compagnie ou corporation.

(3) Lorsque la personne coupable d'une infraction à la présente loi est une compagnie ou une corporation, chaque administrateur et fonctionnaire de la compagnie ou corporation est coupable de la même infraction, à moins qu'il ne prouve que l'acte ou l'omission constituant l'infraction a eu lieu à son insu ou sans son consentement. 1939, c. 49, art. 13.

Lorsque nulle peine spécifique n'est prévue. Acte criminel.

15. (1) Lorsque nulle peine spécifique n'est prévue dans la présente loi, toute personne coupable d'une infraction y visée est réputée coupable d'un acte criminel et est punissable, sur déclaration de culpabilité, de l'emprisonnement pour une période n'excédant pas quatorze ans; mais cette personne peut, au choix du procureur général, faire l'objet de poursuites sommaires de la manière que prévoient les dispositions du *Code criminel* relatives aux déclarations sommaires de culpabilité, et, dans le cas de telles poursuites, elle est punissable d'une amende d'au plus cinq cents dollars ou d'un emprisonnement d'au plus douze mois, ou à la fois de l'amende et de l'emprisonnement.

Poursuites sommaires.

Application de la *Loi sur l'identification* des *criminels.*

(2) Toute personne accusée, ou déclarée coupable, d'une infraction à la présente loi est, pour l'application de la *Loi sur l'identification des criminels,* réputée accusée, ou déclarée coupable, d'un acte criminel, même si cette personne fait l'objet de procédures sommaires de la manière que prévoient les dispositions du *Code criminel* relatives aux déclarations sommaires de culpabilité. 1950, c. 46, art. 3.

EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
IMPRIMEUR DE LA REINE ET CONTRÔLEUR DE LA PAPETERIE
OTTAWA, 1952

14-15-16 ÉLISABETH II.

CHAP. 96

Loi modifiant la Loi sur la défense nationale et, par voie de conséquence, certaines autres lois.

[*Sanctionnée le 8 mai 1967.*]

S.R., cc. 184, 310; 1952–1953, cc. 6, 24; 1953–1954, cc. 13, 21, 40; 1955 c. 28; 1956, c. 18; 1959, c. 5; 1964–1965, c. 21.

SA Majesté, sur l'avis et du consentement du Sénat et de la Chambre des communes du Canada, décrète:

TITRE ABRÉGÉ.

1. La présente loi peut être citée sous le titre: *Loi sur la réorganisation des Forces canadiennes.* Titre abrégé.

. . .

64. Les lois et les parties de lois énoncées à l'Annexe B sont abrogées ou modifiées de la manière et dans la mesure qu'indique cette annexe.

. . .

ANNEXE B.

Modifications et abrogations

Lois visées	Abrogation ou modification
Loi sur les secrets officiels, S.R., c. 198.	1. L'alinéa *d*) de l'article 2 est abrogé et remplacé par le suivant: «*d*) «munitions de guerre» signifie les armes, le matériel ou les munitions de guerre, les fournitures militaires ou tout article susceptible d'être converti en l'un des susdits ou qui peut être utilisable dans leur production;»

ANNEXE B—*Suite*

Lois visées	Abrogation ou modification
	2. Le sous-alinéa (i) de l'alinéa *g*) de l'article 2 est abrogé et remplacé par le suivant: «(i) tout ouvrage de défense appartenant à Sa Majesté, ou occupé ou utilisé par Elle ou pour son compte, y compris les arsenaux, les stations ou établissements des forces armées, les usines, les chantiers de construction maritime, les mines, les régions minières, les camps, les navires, les aéronefs, les postes ou bureaux de télégraphe, de téléphone, de radio-télégraphie ou de transmission, et les endroits utilisés en vue de la construction, de la réparation, de la fabrication ou de l'emmagasinage de munitions de guerre ou des croquis, plans ou modèles, ou des documents y afférents, ou en vue de l'obtention de métaux, d'huiles ou de minéraux en usage en temps de guerre;»
	3. L'alinéa *a*) du paragraphe (1) de l'article 5 est abrogé et remplacé par le suivant: «*a*) endosse ou porte, sans autorité légitime, un uniforme militaire ou de la police, ou autre uniforme officiel, ou tout uniforme qui y ressemble au point d'être susceptible d'induire en erreur, ou se représente faussement comme étant une personne qui est ou a été autorisée à endosser ou porter un tel uniforme;»
	4. L'alinéa *c*) du paragraphe (1) de l'article 5 est abrogé et remplacé par le suivant: «*c*) forge, altère ou falsifie tout passeport, ou une passe, un permis, un certificat ou une autorisation officielle ou émise par l'autorité militaire ou la police, ou tout autre document d'une nature semblable (ci-après désigné «document officiel» au présent article), ou qui utilise ou a en sa possession un tel document officiel forgé, altéré ou irrégulier;»

ANNEXE B—*Suite*

Lois visées	Abrogation ou modification
	5. L'alinéa *e*) du paragraphe (1) de l'article 5 est abrogé et remplacé par le suivant: «*e*) utilise ou a en sa possession ou sous son contrôle, sans l'autorisation du département du gouvernement ou de l'autorité en cause, une matrice, un sceau ou un timbre d'un département du gouvernement ou appartenant à ce dernier ou utilisé, fabriqué ou fourni par un semblable département ou une autorité diplomatique ou militaire nommée par Sa Majesté ou agissant sous son autorité, ou une matrice, un sceau ou un timbre qui y ressemble au point d'être susceptible d'induire en erreur, ou contrefait cette matrice, ce sceau ou ce timbre, ou utilise ou a en sa possession ou sous son contrôle une telle matrice, un tel sceau ou un tel timbre contrefait;»